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THREAT OF CERTAIN IMPORTS TO NATIONAL SECURITY

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1871

AUGUST 13, 1986

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THREAT OF CERTAIN IMPORTS TO NATIONAL SECURITY

WEDNESDAY, AUGUST 13, 1986

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:28 a.m., in room SD-215, Dirksen Senate Office Building, the Honorable Bob Packwood (chairman) presiding.

Present: Senators Packwood, Roth, Danforth, Chafee, Durenberger, Grassley, Long, Bentsen, Baucus, Boren, and Bradley.

[The press release announcing the hearing, the opening statements of Senators Roth, Boren, and Bradley, and a staff report follow:]

[Press Release No. 86-073]

FINANCE COMMITTEE RESETS DATE FOR HEARING ON SECTION 232 OF THE TRADE EXPANSION ACT OF 1962

A hearing on S. 1871, a bill to amend section 232 of the Trade Expansion Act of 1962 relating to imports which threaten to impair the national security, has been rescheduled for the second time by the Senate Committee on Finance, Chairman Bob Packwood (R.-Oregon) announced today.

Senator Packwood said that the hearing, which had been rescheduled once for Thursday, August 7, 1986, has had to be rescheduled again. It will instead be held on Wednesday, August 13, 1986 at 9:30 a.m.

The hearing will be held in Room SD-215 of the Dirksen Senate Office Building. Senator Packwood will preside.

STATEMENT OF SENATOR WILLIAM V. ROTH

Mr. President, in 1587, Sir Francis Drake, the great British naval commander sounded the knell of defeat for the Spanish armada. And while I would take nothing away from Drake's strategy in battle, I would point out that Prof. Garrett Mattingly, in his book, The Armada, points to another cause in the defeat of Spain. According to Mattingly, that great country had become too dependent upon other countries for much of its materiel—in this case barrels—simple wooden barrels.

Understanding the dependency ships have on barrels, Drake earlier intercepted a Spanish fleet and burned the barrels, rendering the most powerful navy in the world vulnerable to the English.

Ironically, England fell into the same trap years later, when it tried to crush the power of Napoleon. Like Spain and her barrels, the English navy became dependent on Scandinavia for tar and rope. Consequently she found herself expending wasted time, money, and manpower to keep the shipping lanes opened so the flow of these precious defense commodities would not be disturbed.

While it's not my intent to teach history this morning, I think the lessons of the past bear repeating. As it's said, we must learn from history lest we become vulnerable to the same errors.

Clearly, America's dependency of foreign imports must never threaten or impair the security of our Nation. Now, more than ever, as the tide of foreign imports rises on our shores we must not lose perspective of our vital defense needs. We must not become hostage to the whim of trading partners, or foreign aggressors who could so easily place a kink in our lifeline.

For these reasons, I join my distinguished colleague, Senator Byrd, to offer amendments to section 232 of the Trade Expansion Act of 1962—the section which authorizes the President to restrict imports if they threaten our security.

Recent history has demonstrated the weaknesses of this section as it now stands. There's little doubt that machine tools are a vital component of our country's defense. This industry has long been recognized by defense experts as essential to military production. In fact, every ship, every missile, every plane, every tank and transport vehicle begins on machine tools. But in the last 3 years, at least 25 percent of the machine tool companies that were in existence in 1983 either went out of business, were purchased by other companies, or moved their operations overseas.

And all this happened while a section 232 machine tool petition waited to be acted upon. It happened while our Secretary of Commerce warned that machine tool imports were threatening our security. It happened while America allowed herself to grow dependent upon others for her own well-being.

And why did it take so long? Because the debate within the administration became a standard trade dispute between free trade and protectionism, the kind of debate you would expect when a case is brought under section 201—the section that covers simple requests for import protection. It happened because both sides of the machine tool debate lost the focus of section 232, that of national security.

The amendment that Senator Byrd and I offer today requires that the President make a decision on a section 232 petition within 90 days after receiving recommendation from the Department of Commerce. It speeds up Commerce's investigation of the petition by shortening the current deadline for commerce action from 1 year to 6 months. To strengthen the focus on national security, it requires the Secretary of Defense to provide the Secretary of Commerce with a defense needs assessment within 3 months after a petition is accepted. And it requires that the report submitted by the Secretary of Commerce to the President include a written statement by the Secretary of Defense expressing concurrence or disagreement with the Commerce investigation and recommendation.

It must be remembered that the general agreement on tariffs and trade recognizes the need for defense and thus allows its members to take trade actions that are considered necessary for security reasons. One well-known scholar on the GATT, Prof. John Jackson, maintains that it, quote: "Explicitly gives the right of determining necessity to each individual government."

Additionally, this amendment includes provisions which enable the public to more closely monitor the facts and debate in section 232 petitions by increasing the availability of information on each case unless it's classified for confidential business or security reasons.

Mr. President, let me assure this distinguished body that I am in favor of liberal trade practices. The record speaks for itself. However, I'm also a proponent of a strong America, possessing a defense capability second to none. For these reasons, I'm joining Senator Byrd on this amendment. We must secure an industrial base that can support our security needs.

PROPOSAL BY SENATORS BYRD AND ROTH

AMENDMENTS TO SECTION 232

NATIONAL SECURITY TRADE ACT

1. ESTABLISHES A TIME CERTAIN FOR PRESIDENTIAL ACTION ON ANY PETITION. SPEEDS-UP COMMERCE'S INVESTIGATION OF THE PETITION, BY SHORTENING THE CURRENT DEADLINE FOR COMMERCE ACTION FROM ONE YEAR TO SIX MONTHS. REQUIRES THE PRESIDENT TO MAKE A DECISION WITHIN 90 DAYS AFTER RECEIVING A RECOMMENDATION FROM THE DEPARTMENT OF COMMERCE. SHOULD THE PRESIDENT CHOOSE TO NEGOTIATE IMPORT RESTRAINTS, SETS A SIX MONTH DEADLINE ON THE NEGOTIATION REQUIRING PRESIDENT TO ACT IF NO AGREEMENT IS REACHED.

2. PROVIDES A CLEARER NATIONAL SECURITY FOCUS TO THE STATUTE THROUGH TWO ADDITIONAL STATUTORY CHANGES WHICH ELEVATE AND REGULARIZE THE ROLE OF THE SECRETARY OF DEFENSE IN THE DECISION-MAKING PROCESS.

FIRST, REQUIRES THE SECRETARY OF DEFENSE TO PROVIDE THE SECRETARY OF COMMERCE A "DEFENSE NEEDS ASSESSMENT" WITHIN THREE MONTHS AFTER A SECTION 232 PETITION IS ACCEPTED. THIS "DEFENSE NEEDS ASSESSMENT" WILL OUTLINE PRESENT AND PROJECTED DEFENSE REQUIREMENTS FOR THE PRODUCT WHICH IS THE SUBJECT OF THE PETITION. THE "DEFENSE NEEDS ASSESSMENT" WILL THEN BECOME THE MEASURING STICK THE COMMERCE SECRETARY WILL USE TO JUDGE WHETHER THE DOMESTIC INDUSTRY IS SUFFICIENT FOR OUR NATIONAL DEFENSE NEEDS.

SECOND, REQUIRES THAT THE REPORT TO THE PRESIDENT SUBMITTED BY THE SECRETARY OF COMMERCE INCLUDE A WRITTEN STATEMENT BY THE SECRETARY OF DEFENSE EXPRESSING CONCURRENCE OR DISAGREEMENT WITH THE FINDINGS AND RECOMMENDATIONS OF THE COMMERCE SECRETARY.

3. CLARIFIES THE BROAD RANGE OF PRESIDENTIAL OPTIONS FOR ACTION. ADDS AN ILLUSTRATIVE LIST OF AVAILABLE COURSES OF ACTION, SHOULD THE PRESIDENT DETERMINE THAT A THREAT TO THE NATIONAL SECURITY DOES EXIST.

4. ENABLES THE PUBLIC TO MORE CLOSELY FOLLOW THE FACTS AND DEBATE IN SECTION 232 CASES. REQUIRES FULL REPORTING OF THE RESULTS OF THE COMMERCE DEPARTMENT REPORT AND THE PUBLICATION OF THE PRESIDENT'S DECISION, EXCEPT FOR CLASSIFIED OR BUSINESS CONFIDENTIAL DATA.

PREPARED STATEMENT OF SENATOR DAVID BOREN

Mr. Chairman, we are here today to discuss S. 1871, a bill introduced by Senator Grassley to strengthen section 232 of the Trade Expansion Act of 1962. Section 232 authorizes the President to impose restrictions on imports which threaten to impair national security. In the past the President has used this authority to impose quotas and fees on imports of curde oil and petroleum products. It is long past time that we again focus our discussion on this aspect of the President's power.

In September 1985, the United States was importing 27 percent of our total crude oil needs. Ten months later our reliance on foreign sources of crude oil has jumped to over 38 percent! We are well on our way to an excessive and very dangerous reliance on foreign oil. As an obvious example one need only look at our crude oil purchases from Saudi Arabia over the past 10 months. Where we were once importing 27,000 barrels per day of crude oil, we are now importing over 700,000 barrels per day! This past January we were importing 3.3 million barrels of crude oil daily. By June imports had jumped to over 4.5 million barrels per day. When will we learn the lessons that history has tried to teach? Can we not remember the tremendous shock to our economy that resulted from the embargoes of 1973 and 1979? Isn't it obvious that when Shiek Yamani says the Saudis are flooding the market to drive out high cost producers he means to shut down our domestic industry?

Mr. Chairman, in December 1981 there were over 4,500 drilling rigs operating in the continental United States. Today, there are barely 700 rigs operating. That is 200 fewer rigs than were operating in Oklahoma alone in 1981. How many rigs must be shut down before our national security is at risk?

If the current trend of domestic production is not enough to put our national security at risk, then perhaps we should consider the impact of these so-called "market conditions" on our future ability to produce our own energy. Four years ago nearly 7,000 students were studying petroleum engineering, geology, and geophysics at the University of Oklahoma, the University of Texas, Texas A&M University, and Louisiana State University. This fall semester that number will drop below 3,000. To quote the dean of petroleum engineering at the University of Oklahoma, Dr. Ray Knapp, "We are losing the pool of wisdom, the mental resources that come from those wise heads that are now surplus to the industry—we are making the industry less attractive for young minds to enter. We are losing much of the pool of wisdom that would sustain the industry for the next 20 to 25 years. And it is not a happy prospect." How many young minds must we close before our national security is at risk?

Mr. Chairman, S. 1871 would add two factors to be considered in section 232 determinations: (1) Long-term dependence of the United States on imports of articles needed for national security; and (2) the destruction of a viable domestic industry producing articles needed for national security. I challenge anyone to show how these factors do not apply to our domestic energy industry. I urge my colleagues to support the improvements to section 232 offered by S. 1871. It is high time we step forward to assist those industries that are vital to our national security.

Mr. Chairman, I would also urge my colleagues to listen very carefully to what my friends in the Oklahoma delegation, Representatives Jones, English, Watkins, and McCurdy, have to say. They will be able to provide additional first hand information on the devastation visted upon our domestic energy industry and those who rely upon it for their economic livelihood. I applaud their efforts.

SENATOR BILL BRADLEY'S STATEMENT ON MR. MARKS' TESTIMONY

Mr. Chairman, I would like to thank Mr. Marks for his testimony concerning section 232 of the Trade Expansion Act of 1962. I appreciate his taking the time to provide the committee with his views. He has raised an important question for this committee to consider. Certainly, the President must keep national security issues in mind when formulating trade policy, but abuses must be avoided. This requires that we have a clear understanding of what is meant by "national security." We would do well to clarify that definition if we propose to accelerate decisions under section 232 of the 1962 act.

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WILLIAM DIEFENDERFER CHIEF OF STAFF
WILLIAM J WILKINS MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510

August 11, 1986

MEMO

FROM: FINANCE COMMITTEE TRADE STAFF (Len Santos 4-5472)

TO: FINANCE COMMITTEE MEMBERS

SUBJECT: AUGUST 13, 1986 HEARING ON NATIONAL SECURITY AUTHORITY TO LIMIT IMPORTS

The Finance Committee will conduct a hearing on August 13, 1986 at 9:30 a.m. on proposals to amend section 232 of the Trade Expansion Act of 1962. Section 232 authorizes the President to impose restrictions on imports which threaten to impair the national security. The hearing will specifically consider S. 1871, introduced by Senator Grassley and others, which is incorporated in S. 1860 as title X.

The hearing will be held in SD-215 of the Dirksen Senate Office Building. A witness list is attached.

I. Current Law

Section 232 of the Trade Expansion Act of 1962, as amended by section 127 of the Trade Act of 1974 and the Reorganization Plan of 1979, authorizes the President to impose restrictions on imports which threaten to impair national security. This authority has been used by the President to impose quotas and fees on imports of petroleum and petroleum products from time to time. Public Law 96-223 (imposing a windfall profit tax on domestic crude oil) amended section 232 to authorize either House of Congress to disapprove of the President's decision to adjust oil imports.

Section 232 requires the Secretary of Commerce to conduct immediately an investigation to determine the effects on national security of imports of an article, upon the request of any U.S. Government department or agency, the application of an interested party, or his own motion. The Secretary must report the findings of his investigation and his recommendation for action or inaction to the President within one year after receiving the application or beginning the investigation. If the Secretary finds the article "is being imported in such quantities or under such circumstances as to threaten to impair the national security," he must so advise the President. Unless the President reverses this finding, he must take such action for such time as he deems necessary to "adjust" the imports of the article and its derivatives so imports will not threaten to impair the national security. The President must report to the Congress within 60 days the action taken and the reasons therefor.

The Secretary must hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to the investigation if it is appropriate and after reasonable notice. The Secretary must also seek information and advice from, and consult with, other appropriate agencies, including specifically the Secretary of Defense. Among the factors which the Secretary of Commerce and the President must consider are domestic production needs for projected national defense requirements; domestic industry capacity to meet these requirements; existing and anticipated availability of resources, supplies, and services essential to the national defense; the growth requirements of such industries, supplies, services; imports in terms of their quantities, availability, character, and use as they affect such industries and U.S. capacity to meet national security requirements; the impact of foreign competition on the economic welfare of domestic industries; and any substantial unemployment, revenue declines, loss of skills or investment, or other serious effects resulting from displacement of any domestic products by excessive imports.

II. S. 1871

S. 1871, the National Security and Trade Act of 1985, requires Presidential action on the Secretary of Commerce's recommendation under section 232 within 90 days of receipt of the recommendation; otherwise the President is required to issue a proclamation that fully implements such recommendations.

With respect to the machine tool case filed March 14, 1983 and on which the President had not acted by November 20, 1985, S. 1871 would, by law, implement the Commerce Secretary's recommendation as of the date of enactment of the bill. (Since introduction of S. 1871, the President did on May 20, 1986 act in the machine tool case by deciding to seek voluntary restraint agreements with Japan, Taiwan, Germany and Switzerland.)

S. 1871 would also add two factors to section 232 determinations: long-term dependence of the U.S. on imports of articles needed for national security and the extinguishment of a viable domestic industry producing articles needed for national security.

III. Background

As the attached table indicates, out of sixteen section 232 cases, the President made an affirmative determination in three cases, all of them relating to petroleum imports.

In his May 20, 1986 decision to seek VRA's on machine tools, the President postponed for six months his section 232 determination pending the outcome of the VRA negotiations.

The record suggests that Presidents have been reluctant to unilaterally limit imports based on the national security criteria. At least two reasons for this can be adduced:

1. The narrowness of the GATT article XXI exception which permits import restrictions for national security reasons in peacetime to the extent restrictions are applied to "implements of war", other materials used to supply a military establishment, or fissionable materials.
2. The concern over creating a giant national security loophole in rules of the trading system, which could be abused by all trading nations.

The concept of limiting imports to prevent the erosion of a domestic industry which may be needed for national security reasons is appealing but fraught with difficult questions, some of which are raised in the attached article. Each imported commodity may raise different questions, even if it is clear that the domestic industry is essential to the national security. For example, with respect to oil imports, dependence on distant sources of supply may be aggravated by import limitations which accelerate consumption of depletable domestic resources. With respect to machine tools, import restrictions may preserve an uncompetitive domestic industry which deprives other domestic industries (of equally great national security importance) of access to the best machine tools.

Questions relating to the nation's wartime needs necessarily require assumptions about the kinds of wars and the kinds of allies which can be relied upon in such wars. But most importantly, the national security exception requires that judgements be made about the extent to which comparative advantage should define the national interest.

(TED-0480)

ATTACHMENT I

SUMMARY OF INVESTIGATIONS CONDUCTED UNDER SECTION 232 OF THE TRADE EXPANSION ACT OF 1962, 1962–1983

Administering Authority: Director of Office of Emergency Planning/Preparedness, 1962–1973

Industry	Initiator	Date of Action & Status	Federal Register Reference
Manganese and Chromium Ferroalloys and Electrolytic Manganese and Chromium Metals	Manufacturing Chemists Association, Inc., Washington, D.C.	Petition filed May 20, 1963. Report on investigation made public July 17, 1964. Concluded that imports did not threaten to impair the national security.	29 FR 11484 August 8, 1964
Tungsten Mill Products	General Electric Co., Nela Park Cleveland Ohio	Petition filed January 2, 1964. Report on investigation made public September 23, 1965. Concluded that imports did not threaten to impair the national security.	30 FR 12433 September 29, 1965
Anti-Friction Bearings and Parts	Anti-Friction Bearing Manufacturers Assoc., New York, New York	Petition filed October 16, 1964. Investigation terminated on November 2, 1966, at petitioner's request.	29 FR 14553 October 23, 1964 — 31 FR 14470 November 10, 1966
Watches, Movements and Parts	Presidential Request	Initiated April 2, 1965. Report on investigation made public on January 11, 1967. Concluded that imports did not threaten to impair the national security.	30 FR 4598 April 8, 1965 — 32 FR 588 January 18, 1967
Chromium, Manganese and Silicon Ferroalloys and Refined Metals	Committee of Producers of Ferroalloys and Related Products	Petition filed May 24, 1968. Report on investigation made public on August 14, 1970. Concluded that imports did not threaten to impair the national security.	33 FR 8518 June 8, 1968 — 35 FR 13037 August 15, 1970
Miniature and Instrument Precision Ball Bearings	Anti-Friction Bearing Manufacturers Association, New York, New York	Petition filed January 31, 1969. Report on investigation made public on May 5, 1971. Concluded that imports did not threaten to impair the national security.	34 FR 2162 February 13, 1969 — 34 FR 7884 May 17, 1969 — 36 FR 8537 May 7, 1971

<table>
<tr><th>Industry</th><th>Initiator</th><th>Date of Action & Status</th><th>Federal Register Reference</th></tr>
<tr><td>EHV Power Circuit Breakers and EHV Power Transformers and Reactors</td><td>General Electric Co., New York, New York</td><td>Petition filed August 7, 1972. Report on investigation made public May 25, 1973. Concluded that imports did not threaten to impair the national security.</td><td>37 FR 16635
August 17, 1972
——
38 FR 14442
June 1, 1973</td></tr>
<tr><td colspan="4">Administering Authority: Secretary of the Treasury, 1973 – 1980
Authority Transferred by Executive Order 11725, dated 6/27/73. See also Pub. L 93-618, 1/3/75</td></tr>
<tr><td>Oil (includes crude oil, crude oil derivatives and products and related products derived from natural gas and coal tar)</td><td>Secretary of the Treasury</td><td>Report on investigation made public January 24, 1975. Concluded that imports threatened to impair the national security. The President imposed a new system of supplemental fees on oil imports. The fee was subsequently reduced to zero.</td><td>Presidential Proclamation 4341 of January 23, 1975
——
40 FR 4457
January 30, 1975</td></tr>
<tr><td>Nuts, Bolts, and Large Screws of Iron or Steel (Except Mine Roof Bolts)</td><td>Presidential Directive</td><td>President directed the initiation of investigation on February 10, 1978. Report on investigation made public November 1, 1978. Concluded that imports did not threaten to impair the national security.</td><td>43 FR 8322
March 1, 1978
——
43 FR 51745
November 6, 1978</td></tr>
<tr><td>Oil (includes crude oil, crude oil derivatives and products, and related products derived from natural gas and coal tar)</td><td>Secretary of the Treasury</td><td>Investigation initiated on March 15, 1978. Report on investigation made public on March 21, 1979. Concluded that imports threatened to impair the national security. Several actions were recommended. None taken.</td><td>44 FR 7264
February 6, 1979
——
44 FR 18818
March 29, 1979</td></tr>
<tr><td colspan="4">Administering Authority: Secretary of Commerce, 1980 to Present
Authority Transferred by Executive Order 12188, 1/2/80</td></tr>
<tr><td>Glass-Lined Chemical Processing Equipment</td><td>Ceramic Coating Company, Newport, KY</td><td>Petition filed March 13, 1981. Report on investigation made public on March 18, 1982. Concluded that imports did not threaten to impair the national security.</td><td>46 FR 45977
September 16, 1981
——
47 FR 11746
March 18, 1982</td></tr>
<tr><td>Chromium, Manganese and Silicon Ferroalloys and Related Materials</td><td>The Ferroalloys Association, Washington, D.C.</td><td>Petition filed August 18, 1981. Report submitted to the President in August, 1982.</td><td>46 FR 49927
October 8, 1981
——
U.S. Dept. of Commerce News (press release) ITA 82-164, 12/3/82</td></tr>
</table>

Industry	Initiator	Date of Action & Status	Federal Register Reference
Chromium, Manganese and Silicon Ferroalloys and Related Materials — Con't.		Presidential decision in May 1984 concluded that imports do not pose a national security threat in light of action taken to remove high-carbon ferromanganese from the Generalized System of Preferences (GSP), and the initiation of a program to upgrade the stockpile of ferroalloys under the authority of the Strategic and Critical Materials Stock Piling Revision Act of 1979.	49 FR 21391 May 21, 1984
Crude Oil from Libya	Presidential Request	In March 1982 the Secretary reported that the 1979 finding of the Treasury Department's 232 study on oil was still valid: that imports threatened to impair the national security. The President embargoed crude oil produced in Libya.	Presidential Proclamation 4907 of March 10, 1982 —— 47 FR 10507 March 11, 1982
Nuts, Bolts, and Large Screws of Iron or Steel (Except Mine Roof Bolts)	Secretary of Defense	Request filed February 11, 1982. Report on investigation made public February 25, 1983. Concluded that imports did not threaten to impair the national security.	47 FR 13546 March 31, 1982 —— 48 FR 8842 March 2, 1983
Metal-Cutting and Metal-Forming Machine Tools	National Machine Tool Builders' Association, McLean, Virginia	Petition accepted March 14, 1983. Investigation completed and submitted to the President, February 28, 1984.	48 FR 15174 April 7, 1983

ATTACHMENT II

THE NATIONAL SECURITY EXCEPTION TO FREE TRADE

BY LEONARD E. SANTOS

It has become accepted wisdom to forecast that the older industrial societies, principally the United States and the countries of the European Economic Community, are evolving into a post-industrial future. In this emerging future, traditional manufacturing jobs will virtually disappear, to be replaced largely by service and high-tech jobs.

While these prospects offer exciting growth opportunities, much of the focus is on the loss of jobs and accompanying economic dislocations which these developments portend. But there is a separate issue which will become more pressing as this evolution proceeds. How, and to what extent, will these societies retain the capability of producing the basic defense items needed to protect their national security?

While this question is particularly pressing for societies in the process of shedding their industrial beginnings, the issue is also relevant outside the industrial context. For example, the Japanese have been protecting their agricultural sector for years, arguing that their national security would be endangered by relying on the more efficient foreign producers. To the amusement of some, Sweden imposed quotas on shoe imports several years ago arguing that the shoe industry was essential to its national security. Swedish armies, it seems, do not want to rely on imported boots.

Thus, the broader trade policy issue is the extent to which trading nations are prepared to permit the transfer to more efficient producers of capabilities deemed important to the national security.

The theory of comparative advantage and the operation of the rules of free trade are in conflict with the idea of preserving industrial or other capabilities necessary to the national defense. The theory of the post-war trading system is that nations are supposed to produce what they can produce most efficiently and exchange the fruits of that production with trading partners which have done the same, to their mutual advantage. Making exceptions to this for national security reasons presents difficult economic choices.

The GATT recognizes, in Article XXI, that states have the right to adopt measures necessary for the protection of their national security. The Article does not define the circumstances where it may be invoked except in general terms. Historically, GATT members have relied on the national security exception sparingly. But the temptation to cite Article XXI grows as nations find no other rationale for protecting their industries. To the extent that nations choose increasingly to restrict imports based on the Article XXI rationale, the mutually beneficial discipline reflected in the GATT will be undermined.

Section 232 of the Trade Expansion Act of 1962 permits the President to restrict the importation of any commodity which he determines threatens to impair the national security. In spite of the availability of Section 232, the United States has not invoked this section as a means of protecting dying industries. In fact, the only significant use of Section 232 has been to restrict oil imports to the United States. The power to make findings of a threat to the national security under the statute has moved from the Office of Emergency Preparedness to the Treasury Department and, since 1979, to the Commerce Department.

It is too early to discern any pattern in the way Commerce administers the sec-

Mr. Santos, attorney for international affairs at the Treasury Department with responsibility for international trade, authored the 1979 Treasury report on the national security effects of oil imports pursuant to the authority of Section 232 of the Trade Expansion Act.

The opinions expressed in this article are the personal views of the author. They do not necessarily reflect the views of the Treasury Department or the U.S. Government.

tion, but there is no doubt that a motive for the transfer was the expectation that industry petitions under Section 232 would receive a more sympathetic hearing at Commerce.

The principal problem with Section 232 is its vagueness. The statute sets few standards for determining what threatens to impair the national security. Some argue that the determination of whether a particular import threatens to impair the national security does not lend itself to precise definition and that the President needs the broadest discretion in this area. But, given the increasing temptation to invoke this section for essentially protectionist motives, this section should contain a greater threshold test as with other U.S. trade statutes, and it should set out some of the elements of a national security threat.

The recently-filed Section 232 petition by the National Machine Tool Builder's Association (NMTBA) illustrates the dilemma presented by the statute and the broader question of protecting industries for reasons of national security. In May 1982, a Florida machine tool manufacturer filed a petition under an obscure provision of the Internal Revenue Code which permits the President to deny the investment tax credit to imports from a country which he determines engages in unfair trade practices. The Florida manufacturer alleged that the Japanese had engaged in a concerted industrial targeting policy to develop numerically-controlled machine tools to the detriment of the U.S. industry, and asked the President to deny such Japanese machine tools the benefit of the investment tax credit. No action has yet been taken on the petition.

Against this background, the Section 232 petition was filed by the NMTBA arguing that the national security requires that the President impose a quota on foreign-made machine tools. The Section 232 petition notes that "the products and technology of this industry are the essence of the industrial manufacturing process. They are, by definition, the 'tools' of production."

The outcome of the Section 232 NMTBA petition should not turn on whether Japan or any other country engages in unfair trade practices in the form of an industrial policy for machine tools. Rather, the outcome must turn on an analysis of the effect of imports on the health of the U.S. industry and its relevance to the national security.

Without judging the merits of the petition and whether it satisfies the standards of Section 232, it is possible to note some of the dilemmas presented. If the U.S. machine tool industry is faltering due to the greater efficiency and/or technological advancement of the foreign competition (whether or not fostered by an industrial policy), then denying U.S. buyers of machine tools access to those foreign machine tools could undermine the competitiveness of U.S. users of machine tools, such as the U.S. automobile and aircraft industries. If, as convincingly claimed by the NMTBA, machine tools are the essence of the industrial manufacturing process, the United States has a real interest in using the best machine tools available. In this setting, protecting the U.S. machine tool industry offers no assurance of improving its competitiveness

The reasons that make machine tools essential to the competitiveness of U.S. industry also support their national security implications. Whether or not the Secretary of Commerce finds that the importation in current circumstances of machine tools represents a national security threat, even true believers in the principles of free trade must consider whether they are prepared to witness the disappearance of entire (uncompetitive) industries, which are, at least arguably, important to the national defense.

It would be fortuitous if this apparent dilemma were resolved by a change in the premises underlying this discussion. Perhaps the evolution is not toward a post-industrial future, but toward a more automated and efficient industrial future. Perhaps technology will change conventional war to such an extent that traditional industries will not be needed to produce the weaponry of future conventional wars. Perhaps the post-industrial societies are prepared to rely, through formal alliance or otherwise, on foreign sources for conventional weaponry. Perhaps post-industrial societies are prepared to lose the ability to wage a conventional war in favor of high-tech warfare. Most of these possibilities seem as remote as the possibility that conventional warfare itself will cease.

The likelihood is that some pragmatic course will be followed; that post-industrial societies will seek to reap the benefits of the emerging technologies while preserving, even if inefficiently, some industries which are truly essential to the national security. The task ahead is to design laws, or at least policies, which adequately protect the national security while capitalizing on the great economic promise implicit in the evolution.

The CHAIRMAN. The committee will come to order, please. We will start a few minutes early. I have a short opening statement, and Senator Bentsen does; and I see Senator Byrd, who is our leadoff witness, and Senator Roth. So, we might as well get going. This is the last in a series of 17 trade hearings that the committee has held since the beginning of May. Today's hearing will focus on Presidential authority to limit imports for national security reasons.

I have a special interest in this matter because I believe that, as our economy evolves further from establishing manufacturing activities, the question of which industries are necessary to our national defense will become more pressing.

Several industries have come before us during these hearings, arguing that they are entitled to special protection because of their importance to our national defense. The national security exemption would, if applied broadly, alter most of the fundamental assumptions of the trading system.

It is difficult to draw clear limits on the extent of this exception, and we expect to engage the excellent witnesses today in a discussion of the appropriate scope of this national security exception.

Senator Bentsen.

Senator BENTSEN. Mr. Chairman, last year we imported 27 percent of the oil that we use in this country. Last month, we imported 40 percent. In another year or two, we will be importing at least 47 percent; and that is going to surpass our peak in 1977. It also is more than we did in 1974, and that is when we became subject to an oil embargo and we saw the long lines at gas pumps; and we could not have handled an international crisis.

By 1990, according to the Library of Congress, we will be importing over half the oil we use in this country. For the first time in our history, the United States will be dependent on imports for one of its most basic commodities.

Even more alarming than that, that commodity is the only one that has been successfully embargoed by foreign producers in the past. Once again, the OPEC producers who embargoed our oil supplies in the early 1970's will have a stranglehold on us.

There are few, if any, people in the administration who were in Washington then. None of them experienced first hand the frustration, the anger that those of us who were here felt with OPEC. We should have learned from that experience. I know I did; others did, too.

Perhaps the administration, lacking firsthand experience, fails to fully understand the consequences of standing aside and letting OPEC strategies succeed as they are succeeding. Domestic production is down. Consumption is up. And imports are flooding to fill that widening gap. Those additional barrels are not coming from Norway or Canada. Non-OPEC sources of oil were already producing flat-out before this current crisis. The production in those countries in many of them has peaked and has started downhill. Fully 80 percent of the new oil imports are from OPEC.

Last year, about one barrel in nine that we consumed was OPEC oil. By 1990, it will be more than one barrel in three. This administration will be gone by then. It will be someone else's problem then, but it will be a very serious problem.

The United States will be forced to conduct foreign policy with one hand tied behind its back. Oil policy is no longer a regional policy, if it ever was. It is a national security issue of paramount importance to every corner of our Nation.

Part of the solution is the development of an energy policy which robs OPEC of its ability to manipulate prices. That means, to my mind, an energy policy explicitly designed to hold oil dependence to 50 percent or less. That means attacking both the demand and supply side of the petroleum equation. I think that means an oil import fee.

I think it makes just as much sense for a basic essential industry such as that as it did for us to put some allocations on steel imports, a way to see that we still had a viable steel industry in this country.

Now, this hearing will review section 232 of our trade law, which gives the President authority to impose import restraints for national security reasons. That provision must have been crafted over 30 years ago with oil in mind.

President Eisenhower used it and virtually every President has used it since. President Reagan, for example, invoked this section to cut off Libyan oil imports to the United States several years ago. He should use that authority again to put an end to OPEC manipulation of the price of our energy supply, if the steps aren't taken of our foreign policy at some other time.

Mr. Chairman, I appreciate very much your holding these hearings, and I am looking forward to the statements of the witnesses.

The CHAIRMAN. Thank you.

Senator Roth.

Senator ROTH. Mr. Chairman, I, too, appreciate very much your holding this hearing on what I consider a very, very important matter. I think it is clear that for all the imports into our country, that it is very important that we maintain an adequate industrial base for the security of our country.

It is this point, I think, that has been called into question. I think the recent machine tool case has taught us one clear lesson, and that is that there is a need, a need for a deadline for Presidential action. I can't think of any area, of any more critical problem, than assuring that this country has an adequate machine tool industry.

Now, one of my concerns is that the focus of decisions in this area on section 232 should be national security. Too often reports in the press show that the debate on section 232 is being considered as if it were a standard trade dispute between protectionism and so-called free trade. It is not that. What we are trying to assure under section 232 is that our national defense needs are met, that we have—as I said—an adequate industrial base. And fortunately, GATT recognizes this and makes it clear that members are free to take whatever import actions are necessary for their essential security interests.

I am very pleased that you are having the hearings today, and I have been particularly pleased to work with the distinguished Democratic leader in drafting legislation in this area, and I look forward to hearing his testimony in a few minutes. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator **Grassley**. First of all, Mr. Chairman, I need to thank you as well; but more importantly from my standpoint because this hearing does involve legislation that I introduced on September 20, 1985. So, I personally want to thank you for bringing that to the attention of the Congress through this hearing.

The delay in the machine tool case prompted me to introduce this legislation last year. When I first introduced my bill the machine tool case had been languishing in the White House for approximately 19 months.

As you know, the Secretary of Commerce has 1 full year for his investigation from the time the petition is filed before he must offer a recommendation to the President. Yet it was almost 2 years from that date before the President asked several major foreign sources of machine tools to cut exports to the United States. And of course, when the national security is at stake, such a delay is incomprehensible to me and to most other people.

However, what is more regrettable is that, rather than wait for the President's decision, many companies were forced to move some of their facilities offshore or they were forced to shift from producing machine tools to importing them.

This has resulted in the loss of U.S. jobs and the further dependency on foreign sources for this highly critical manufacturing base which is very much related to our national security.

Mr. Chairman, I am fully aware that section 232 was intended by the Congress to be used very sparingly, and I believe it has been used very sparingly and, of course, only in situations in which the national security is truly threatened. It was not and still is not today intended to be a guise for protectionism under my legislation. My intent is pure and simple, and that is to avoid delays in responding to the affirmative findings by the Secretary of Commerce when lack of any action by the President could force industries to make business decisions that may result in moving their businesses offshore, going into licensing or joint ventures with a foreign source, or, more devastating, going out of business all together, all of which result in the loss of American jobs and, more importantly, a potential threat to our overall national security.

Therefore, without taking away any of the choices available to the President under existing law, the bill would simply state that the President failed to take any action on the Secretary's recommendations after 90 days of its receipt; he shall issue a proclamation which fully implements the recommendations of the Secretary.

Mr. Chairman, I applaud President Reagan's decision to move forward on the machine tool petition by calling for voluntary restraint agreements with the offending countries. However, my question is whether or not that might not be too little too late. This unmistakable and frightening erosion of the very core of this Nation's productive and defense capacity cannot continue, whether it be in machine tools or some other critical element vital to this nation's security.

I thank you, Mr. Chairman, once again for this hearing.

The **Chairman**. Senator Boren.

Senator **Boren**. Mr. Chairman, I want to join the others who have commended you for holding the hearings on this very important piece of legislation and also commend the authors for offering

S. 1871 which will strengthen the existing authority under section 232 by adding, of course, additional provisions, having the President determine the long-term dependence of the United States on imports of articles that are needed for national security and whether or not this will tend to destroy viable domestic industries producing articles that are vitally needed for national security.

I am very happy also, Mr. Chairman, that later in the hearing this morning you will be hearing from several members of the Oklahoma congressional delegation who are here to testify about the impact that our increasing dependence on foreign oil and what it is doing to the national security interests of this country.

We will have the dean of our delegation in the House, Congressman Jim Jones, my own Congressman from the district where I live, Congressman Wes Watkins; and I know they are expected to be joined by Congressman McCurdy and Congressman English from Oklahoma. So, we are very, very pleased that they are going to be here and will be testifying this morning.

We, of course, are confronted with clear signs of a growing dependence on foreign sources for the needed petroleum products of this country. It is clear that we are once again on the dangerous path toward unwise dependence on foreign sources. In September 1985, only 27 percent of our energy needs in this country in the area of oil were being imported. In just 10 months, that figure has already risen to 38 percent; 10 months ago, we were only importing 27,000 barrels per day from Saudi Arabia; now that figure is 700,000 barrels per day. Mr. Chairman, when in the world are we ever going to learn from history? When are we going to realize that we should not again make this Nation dependent upon foreign sources for the energy which we vitally need in terms of our national security?

When are we going to learn that it is wrong to put the consumers of this country once again at the mercy of OPEC and make them the hostages once again of the OPEC nations? It is not in the interest of the consumers; it is certainly not in the national security interest of the United States.

We are destroying the effort to explore for oil and gas in this country and increase our reserves here at home. Just 3 years ago, we had over 4,000 rigs drilling in the United States; today the number hovers around 700, and that is the lowest figure that we have had since the records began to be kept in 1940. Even in the midst of World War II when we had a shortage of metal products and equipment for the drilling of oil and gas wells, we were able to keep more rigs drilling in the United States looking for oil and gas than we have in operation right now.

There are fewer rigs in the entire United States operating right now than there were just in the State of Oklahoma a few years ago. It is a disaster, not only for the economy in our part of the country; more importantly, it is a real and dire threat to the national security of this Nation. Not only are we discouraging the expansion of reserves in this country, we are also depleting the pool of talent needed to keep the production alive in the future. Mr. Chairman, people often talk to me as if we could simply turn off the supply of oil and gas in this country like we turn off the water tap in some apartment in Washington or New York, and then turn it back on when we need that domestic energy once again.

It is not so simple. If the wells are plugged, we stand to lose—according to reports I have seen—some 200,000 stripper wells in this country that will be prematurely plugged with the resource lost forever if the prices stay in the range of $10 to $12 or $14. Some 200,000 wells could be lost; but we also face the destruction of the industry itself.

You can't say to young people who want to study petroleum engineering and geology: We may need you 20 years from now. Go ahead and get that degree and just be on hold. What do we want them to do—go down and apply for food stamps and welfare in the meantime? Someday your country may need you? Those young people are simply not going to go into that field; and the evidence is already there.

Three years ago, Mr. Chairman and my colleagues on the committee—and I think this is an important fact to know—at the University of Texas, Texas A&M, the University of Oklahoma, and Louisiana State University—just four universities—where we train so many of the people in the fields of geology, geophysics, and petroleum engineering, we have 7,000 young people majoring io those three disciplines, adding to the talent pool of that industry vitally needed in this country.

This fall, only 3,000 will be pursuing that course of study, a drop from 7,000 to 3,000 in just a 3-year period of time. The dean of one of those distinguished engineering schools said: We are absolutely endangering the future of that industry in the United States with our shortsighted failure to develop a national energy policy that will assure that we will not once again be overly dependent upon foreign sources. We are not just talking about damage to this country this year or this month; we are clearly talking about a long range impact on the economy of the United States, the talent pool necessary to keep a vital industry alive.

And I urge my colleagues to take action on this legislation. I hope that the President will see fit to take action as President Eisenhower did under section 232, exercise the discretionary authority that he already has, and take immediate action to protect the national security of this country so we will not plug the wells we have already paid for.

We have already paid for them financially and in environmental costs. We will not lose those 200,000 wells. We will not lose those young people vitally needed, part of the talent pool. We will not continue to shut down the process of exploration for oil and gas in this country. And we will not continue the rapid escalation of dependence on foreign sources for the precious energy needs of this country.

The President should not wait until the damage is already beyond repair. The President should exercise his authority under section 232 now, and we should take action to further strengthen that authority with this legislation.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. No comments, Mr. Chairman.

The CHAIRMAN. Senator Long.

Senator LONG. No comments at this point, Mr. Chairman.

The CHAIRMAN. Then, we are delighted to have as our first witness the distinguished Democratic leader in the Senate, Senator Byrd.

STATEMENT OF HON. ROBERT C. BYRD, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator BYRD. Mr. Chairman, thank you for conducting these hearings today. I am delighted to see such a splendid attendance on this committee. That in itself indicates the interest in this legislation and the need for doing something and doing something now in the interest of the national security. I am pleased to have the opportunity to testify on my proposed changes to the national security trade provision, section 232 of the Trade Expansion Act of 1962, as embodied in the National Security Trade Act of 1986, which Senator Roth and I will introduce later today.

I thank Senator Roth for his work, his assistance, his imagination, his vision in drafting this important legislation. This legislation is similar in scope to the bill that I introduced as the National Security Trade Act, S. 1533, on July 31, 1985; and it is similar to the amendment—somewhat similar to the amendment—that I offered to the Department of Defense authorization bill on last Saturday, August 9.

Since section 232 was enacted in 1962, 16 petitions alleging a threat to national security have been filed. This is not a landslide of cases nor should it be. The language of the statute and the legislative history are quite clear in establishing what kinds of cases rise to the urgency of a threat to the national security. The statute describes in detail the factors to be weighed in deciding whether or not there exists a national security question; but it is very clear from the legislation and the history behind it that Congress intended that the statute function to effectively prevent the destruction of American industries which are so vital to the national security.

Indeed, section (c) requires that the President recognize the close relation of the economic welfare of our Nation to our national security and to take into consideration the impact of foreign competition on the economic welfare of individual domestic industries. The legislative history provides an unmistakable indication of congressional intent.

When the predecessor statute was first considered in 1955, Congress extended the reach of prior law which dealt only with issues of national defense so that the act would encompass any industry important to the national security. Despite a consistent effort to strengthen the statute, congressional intent remains frustrated by inaction on the part of successive administrations for a confusing and sometimes elusive litany of reasons Presidents have not granted relief to any industries filing petitions under section 232.

Experience has shown that successive administrations are willing to wait in hopes that the problem will go away, rather than expose themselves to charges of protectionism. Well, the problems have not gone away; but in the case of, let's say, ferroalloys and machine tools, those industries very nearly have gone away. The charts will show that from the time that the complaints were filed until the present time the ferroalloy and the machine tool industries have experienced dramatic losses in market share to imports.

Let's take a look at this first chart to my left. Ferroalloys: beginning in 1981, have climbed from 54.9 percent—we are talking about the import share now of the U.S. market. The import share of the U.S. ferroalloy market. In 1981, the import share was 54.9 percent; in 1982, 54.3 percent. Under the present law, that first year is for "free," we say. The Department of Commerce will prepare and submit its report.

Take a look at the next year, 1983. The share of imports in the U.S. ferroalloy market had climbed to 58.5 percent; in 1984, it climbed to 59.2 percent; in 1985, 60.7 percent; and in 1986, 71.2 percent, based upon totals thus far this year.

Ferroalloy employment now, let's take a look at that. It is not a labor-intensive industry. In 1981, it only employed about 6,700 people in these United States, the 50 States of the Union. So, we are not here today pleading the case of this industry saying that if we do something about it, that we will cut the unemployment in this country 1 million, or 2 million, or 3 million, or 4 million, because there aren't very many people employed in this industry; and there never were very many people employed in it.

In 1981, 6,700—6,700—in 1982, 4,900; in 1983, 3,900; in 1986, 3,600—almost half of those that were employed in 1981. In West Virginia, the employment has dropped from something like 800 down to around 400—between 400 and 500. We had three plants in West Virginia. This doesn't create a very big wave when it comes to employment of people, but it is important to the national security of this country.

What are ferroalloys? We are talking about chromium, manganese, silicon; we are talking about the ores that are produced in the first place, and then the processing of those ores into ferroalloys. Ferroalloys are essential ingredients in the production of finished steel and cast iron. Chrome, for example, is essential to provide the steel with corrosion resistance, used in the stainless steel medical instruments.

Ferromanganese is needed to roll the steel; otherwise, the hot steel is too brittle to shape. Ferroalloys are added to steel to remove dissolved oxygen, to control the effects of sulphur and to change the properties of finished steel. Their introduction improves steels' hardenability, corrosion resistance, toughness, and resistance to high temperatures.

The iron and the steel industry accounts for about 90 percent of the ferroalloy consumption.

Now, a Senator has already mentioned machine tools. Machine tool imports have gone from one-third of the U.S. market, when that industry filed for relief in 1983, to an estimated 53 percent this year. Now, how is it that any President or any administration would be willing to let a vital element of our defense production disappear without action? Our trading partners in Europe and Japan wouldn't do it. They are not so complacent about it. Indeed, in the case of ferroalloys, the European and Japanese Governments have in place national plans to ensure the survival of critical ferroalloy production capacity.

Now, of course, we can get all of the ores we want from South Africa. That country is the foremost producer in the world; but forget about South Africa. We don't have to have it from there. We can always fall back on our good friends, the Soviets. The Soviet Union is the second highest producer. How would you like that? How would you like to have to depend upon the Soviet Union in a national emergency for these ores, for the ferroalloys?

How would the President like that? This is a defense-minded President, and I am a defense-minded Senator; and so are those on this committee. And we talk a lot about SDI; we talk a lot about a 600-ship Navy and about the cannons and the submarines and the tanks and the guns.

I was a welder in World War II. I welded in the shipyards and I welded steel. We built victory ships and liberty ships in Baltimore and in Tampa, FL. I welded steel. In the next war, I won't have to weld steel because our steel production has gone down; the steel furnaces have gone cold; and the steel plants have closed—many of them all over this country.

Mr. Reagan said to the steel workers a couple of years ago: Forget it; you have had it. The wave of the future is McDonald's, Sears, Roebuck, K-mart. Well, we all appreciate what McDonald's is doing and what Sears, Roebuck is doing to employ people in this country. Sears, Roebuck is the second greatest employer in this country; and we salute them for that, and we want them to employ more. But in the next war, I won't have to weld because we won't have steel.

I can just get myself a job in a hot dog stand or a hamburger stand. We wonder about our trade deficit, but we can't expect to overcome $148 billion trade deficit last year and $170 billion this year by shipping hamburgers abroad.

Our industries have eroded. Our manufacturing base has eroded. We can't hope to compete with these other countries. They have modernized their industries; we have helped them, and now we are paying the price. In the United States, I regret to say, that we often refuse to see the fire until we feel the heat. Unless we are at war or otherwise face a conspicuous national crisis, on the order of the gas shortage of a decade ago, our Government is often slow to recognize our defense needs. I have talked to Mr. Reagan; I have talked with him more than once. I have talked with him across the table.

I have talked with him about ferroalloys when Strom Thurmond and the others were talking about textiles. I have talked with Mr. Baker, now Secretary of the Treasury, about ferroalloys. I have talked with a lot of people in the administration. Mr. Baker listened to me more than any others. I think I made a little impression on him; but we haven't had any success in getting relief for this vital industry.

We seem doomed to repeat in every generation the mistakes that erode our defense production assets to the point that we are left scurrying to rebuild an industrial base that is the product of years of neglect. The administration's latest proposal to reduce the strategic stockpile and its inaction on the strategic petroleum reserves are recent examples of this trend.

Let me describe what this legislation will do. First, the legislation establishes a time certain for the Department of Commerce in which to submit its report. Under the present law, that is 1 year. This legislation would encompass that or reduce that to 6 months. And then, the President within 90 days of the time that the Secretary of Commerce and under this legislation the Secretary of Defense will report their determination to the President, the President must act or state why he has refused to act on a matter that could impact upon the national security.

Under present law, there is no time limit; and as Senator Long, the distinguished ranking member of this committee, said on the floor the other evening, the President can take months, he can take years, he can take forever. He never needs to act. He doesn't have to act; his successor won't have to act; and his successor won't have to act; and his successor's successor's successor won't have to act. The distinguished Senator from Louisiana made that very clear.

So, there is no time limit under present law for the President to act in which he has to act. We have seen petitions by the ferroalloy industry and the machine tools industry drag on for months and months without resolution.

American industries deserve the certainty of a response, and we all need to know whether the national security is threatened as a result. Once an industry is gone, it is too late. Like the old song that I mentioned last night, I cried but my tears came too late; and that is the way it is.

With your industry—the Senator from Oklahoma—the oil industry. With your industry—the Senator from Delaware and other Senators—the steel industry. You are crying but your tears are falling too late. And I am crying, and I have been crying, but my tears are falling too late also.

The time which the Secretary of Commerce and the Secretary of Defense have to make a determination in this bill is reduced to 6 months. I do not believe it is unreasonable to require that a matter which may involve national security be decided within 6 months. Time is of the essence. The bill enlarges the role of the Secretary of Defense. He cannot supplant the role of the Secretary of Commerce, nor should he. The Commerce Department has much of the economic data on American industries and the scope of foreign imports; but this is not a conventional trade question.

The language of the statute makes it clear that the threat of injury to national security must be assessed after weighing many factors, many of them within the expertise of the Department of Defense. And for that reason, this legislation calls upon the Secretary of Defense to make a separate defense needs assessment within 3 months of the time that a petition is initiated and that this report be included in the Commerce Department's report to the President.

Moreover, the bill requires a separate statement of concurrence or dissent from the Secretary of Defense, the chief cabinet officer charged with the responsibility for national security determination.

Third, this bill enumerates the available courses of action, should the President determine that a threat to the national security does exist. And this is intended to broaden and not limit existing options. The language here closely mirrors the broad statutory authority under section 301 of the Trade Act, but it also includes a procedure whereby the President can initiate negotiations with foreign governments to resolve the problems. Remember that the statute is aimed at threats to the national security. If the President can put another country on notice that the imports are a potential danger and that the United States will not tolerate that danger, perhaps a major problem can be solved before it does damage to our economy or to our relationships with another country.

This authority does not permit the President to bargain away any duties or other existing import limits. And if the President chooses this path, he has 6 months from the date of submission of the Commerce Department's report to reach an agreement. If no agreement can be reached within that time, he must act or publish in the Federal Register the reasons why he has declined to act.

Finally, the bill increases the visibility of the entire section 232 process. The results of the report of the Secretary of Commerce, as well as the President's final determination, are to be published in the Federal Register, excluding of course such information that may be classified or deemed business confidential. This increases the visibility of the entire process.

The petitioning parties, the Congress, and the public at large deserve to know the basis on which such decisions are made. This statute has become a dead letter, and petitioners in the ferroalloys industry and the machine tool builders included have lost faith in the operation of the law. If the data are not restricted for a reason, let them know why a decision has been made.

Does this bill open a broad new avenue of trade relief? It does not, but it does create a realistic avenue of relief when vital sectors of the economy are threatened by imports. It breathes life into a more abundant statute and supports the original intent of Congress.

Which companies can expect relief under this legislation? I should think that certainly the ferroalloy producers should have some reason for hope at last. Crucial high-technology sectors, such as the semiconductor manufacturers, should consider how this legislation applies to their situation. Emerging technologies, such as fiberoptics and ceramics, may be eligible. Often, foreign production in such new areas far exceeds domestic needs and the excess is targeted for the U.S. market, so that emerging industries important to the national security of this country are overwhelmed.

We need to get beyond the idea that national security is solely a function of how many troops and weapons we can field. The ability to sustain our defense production base and support our military in time of crisis is an important measure of our national security and of our strength as a nation. The economic well-being of vital industries must be as much a national priority as the maintenance of strong armed forces.

I am convinced that this legislation will make an important contribution to safeguard the production base.

And Mr. Chairman, I ask unanimous consent that the remainder of my statement be placed in the hearing record.

The **Chairman**. Without objection.

Senator BYRD. Let me just say finally that I thank the committee, and whether Senators are devoted to a view of the purest free trade or whether they are hardened by the trade crisis, I hope that they will support this important legislation.

The CHAIRMAN. Thank you very much, Senator Byrd. Let me announce that the Oklahoma delegation had to leave; they have a vote going on on the Senate floor, and they may have several votes. So, we will go on with our third witness, Dr. Ikle, when we finish with Senator Byrd. There may be some questions for Senator Byrd. When the Oklahoma delegation comes back, I will interrupt whatever witness is on and put them on.

Senator Bentsen.

Senator BENTSEN. Mr. Chairman, I have no questions. I do want to congratulate the distinguished minority leader on a very able statement that very forcibly points out the problems facing this country.

Senator BYRD. I thank the Senator from Texas, who has been a leader in promoting this type of legislation.

The CHAIRMAN. Senator Roth.

Senator ROTH. I have no questions, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Senator Byrd, I would ask one question. One of the differences between your bill and mine would be the 6 months, in your bill, for the Secretary of Commerce to act, as opposed to my leaving that at 1 year. Now, we have the same period of time—the 90 days—for the present act. I have been criticized by some in the last few months for that 90 days being too short. What is your rationale for the 6 months versus the 1 year?

Senator BYRD. Well, Mr. Grassley, you will be criticized; you can be sure of that for anything you are trying to do to help in this area. You will be criticized as a protectionist. Even if it is clear that you are simply trying to protect this country's national security, you will be labeled a protectionist. Now, what is the difference? And why the difference?

Senator GRASSLEY. Yes.

Senator BYRD. Well, the difference is that the Department of Commerce doesn't need more than 6 months. It has all of these data it has collected over the years. I think it has most of these data at its fingertips. Why should we give it 1 year? They only need 6 months; 1 year is too long. These industries have been suffering. It is our national security that is at stake. I would say that the Department of Commerce doesn't need more than 6 months to compile and analyze these data and provide the report to the President.

The CHAIRMAN. Senator Boren.

Senator BOREN. Again, Mr. Chairman, I just want to commend the distinguished Democratic leader for his statement. I hope that his tears aren't too late, but I think he is right. We continue to fail; every generation seems doomed to repeat the mistakes of the last. The records and history are full of examples of waiting too long to deal with a problem; and the tragedy is that, when we are dealing with items necessary for national security, it is too late. Once that national security interest comes into play, it is too late. If we were in some kind of wartime situation or other international emergency, and find ourselves in short supply of some precious commodity, then it is too late.

The leadtime required to reestablish a domestic industry, to come up with new ways of processing these critical products, it is too late to do that on a short fuse. You know, we are dealing with a world now where we have even less time. In World War II, you had the opportunity to begin to launch crash programs for synthetics; we think about things like rubber and other precious commodities. Unfortunately, with the technologies with which we are working now, the next international emergency on a massive scale won't allow us that kind of leadtime, and it is going to be a tragic mistake.

And I think the leader has very ably pointed out the need for immediate action, and I commend him for his statement.

Senator BYRD. And I thank the Senator.

Senator ROTH. Senator Baucus.

Senator BAUCUS. Mr. Leader, I want to thank you, too, for what you pointed out here. You have very forcefully and frankly presented the national security argument in various different forums. You are here today before this committee because we are considering this bill, and we very much appreciate your experience, particularly in your State of West Virginia, and the problems that beset West Virginia because of the onslaught of foreign imports which do threaten our Nation's national security.

You have also very forcefully presented this same view on the floor of the Senate a few days ago, I think, very appropriately because that was a time when we could perhaps pass legislation here that directly meets this problem. We all know that, even though we are having a hearing here today on this subject, and even though this committee may report out the bill which includes reform of section 232, that the chances of a trade bill passing—even this provision, section 232—passing both the Senate and the House and where the conference meets and the bill signed by the President, it is very unlikely. It is highly unlikely this Congress is going to pass a trade bill this year. I very much hope it does. I think the majority of this committee very much hope that it does.

Your bill is strongly supported by this committee. It is supported by both Republicans and Democrats in this committee, and I thank you for bringing the issue to the floor of the Senate a few days ago to help raise the profile of this issue.

It is not only industries that directly affect our national defense that are at stake here. You know, some countries use the national security exceptions to protect industries in their own countries which are only remotely, if at all, related to national security. The Japanese claim that they must protect agriculture to protect Japanese national security. I understand that ever Sweden claimed a national security exemption under article 21 of the GATT to protect its shoe industry, claiming that soldiers have to wear Swedish boots if they are going to be effective soldiers.

So, all I am saying is that this is a very real problem. It not only affects direct defense industries, but it also directly affects our economic security because, frankly, our national security I think depends upon our economic strength, our economic power, the ability of this country to project its economic power worldwide; and we all know that that is faltering and it must be corrected. So, I want to thank you very much for coming here.

Senator **Byrd**. Mr. Chairman, I want to thank the Senator from Montana for his very effective, thoughtful, and powerful support of this legislation. He demonstrated that same dedication and powerful support in the Senate last Saturday.

One of the problems, of course, is not only that which the distinguished Senator has pointed out very clearly; namely, the time element here in which we are caught. We have but few days left in which to act; but I am also concerned that, if and when—and I hope this Congress will act—but if and when it does put a bill on the President's desk, I am concerned about whether or not he will sign it. I would venture to say that about every department head down there will urge the President not to sign it, based on the previous experience with the Department of State, Department of Commerce, and other departments. Hopefully, there will be a change in direction and a change in thinking; but anyhow, we ought to do it, we ought to try it. We ought to put it on his desk and let the buck stop there.

Senator **Roth**. Senator Long.

Senator **Long**. Mr. Byrd, I think you made a very fine statement, just as you made a very fine statement about your position yesterday evening. It seems to me that we will have to wait a long time—longer than I am going to be here—and I suspect longer than you may be here, or maybe any Senator here is going to be here—if we are going to expect much help out of the executive branch of this administration.

Now, when I see statements such as the one by the Department of Defense witness here this morning, offering us little help in solving our problem, it highlights the need of following the advice you suggested. Let me just read this and invite you to comment on the statement of the witness appearing for the Defense Department on page 4; it says:

> We must be prepared to deal with such a wide range of potential emergencies, we need a flexible policy for industrial mobilization, even for a one or three year mobilization period. We should not take it for granted that we would be cut off from all imports. For example, during the mobilization period in 1951-52, none of our imports were impeded.

In 1951 and 1952, that is the Korean war we are talking about. He might as well have said that we could have captured Grenada without the national security provisions of the trade laws. Now, that is not the kind of thing that we have to be prepared for, as I see it.

The witness doesn't even discuss the type of emergency that would require us to have a steel industry. You recall, because you were part of it, how in World War II the Japanese started the war by sinking our Pacific Fleet; that is where most of our ships were. The only reason they didn't get our aircraft carriers was because they had been sent out to put some planes on Wake Island and Halsey ran into rough weather and just didn't get back in time to get his ship sunk along with all the rest of them; otherwise, we wouldn't have had any ships left in the Pacific to fight that war. A quirk of fate is the reason those aircraft carriers didn't get back to Pearl Harbor in time to get sunk along with those battleships. It took years to rebuild that Navy to where we could go out there and fight that war with the Japanese effectively.

I just don't find anything in the Defense Department statement that really discusses the facts.

If we want to do something, we are not going to have any help from this administration in showing us how to do it. I regret to say it is that way, but the Congress is going to have to do as it has done on some occasions: measure up to the problem; we must say, "We are not satisfied with that; whether you like it or not, you are going to have to do something," without the President showing how to do it.

Senator **Byrd**. Mr. Chairman, I am sorry that the Senator from Louisiana feels that he won't be here when this legislation is passed, and I think he is probably right—or certainly before it is signed into law. But Rip van Winkle slept for 20 years also; and if we think for a moment that the situation today is like it was in World War II, we are way, way behind the times. It is time that we awaken. We won't have that kind of time the next time.

Senator **Long**. I don't fault anyone for supporting their party leadership, as the Republican side of the aisle did when your amendment was offered; but I would submit that, having joined together a solid party line vote to keep anything from happening on the floor when you offered your amendment—and I can understand their arguments; they made some good arguments about committee jurisdiction and that type of thing--it seems to me the burden is now more than ever on the majority of the Senate who voted against your amendment to join with those of us who see the problem and think that there is something very important about this and try to get something done.

If we quit arguing about committee jurisdiction, what committee is going to be involved and who the conferees are going to be and all the rest of it, if they will think in terms of this being a serious national problem that should be dealt with before this Congress adjourns and goes home Friday night, maybe we could do something. I think there still might be time enough left to do something.

Senator **Byrd**. Mr. Chairman, I thank the distinguished Senator.

Senator **Roth**. We still have several Senators who have not had the opportunity to ask questions. I would point out that we have a very full agenda this morning. If we are going to cover it, I would hope that we could move as expeditiously as possible.

Senator Durenberger.

Senator **Durenberger**. Mr. Chairman, I appreciate the problem that the committee has this morning, and I did want to explore with the Democratic leader, since he brougbt up riveting in the Second World War, the issue of how best to provide for an industrial base for national security. There are a variety of ways we can do it. We can do it through tax policy. We can do it through direct subsidies, as we did during the war. We can do it through indirect subsidies, as he suggested in his legislation, which is to maintain a higher consumer price for American products in order to establish it, or we can put it in the Defense budget.

There is a variety of ways to do it, and I would love to ask the leader for his opinion on that subject; but I am afraid we don't have enough time this morning to explore all that.

So, let me join in complimenting him and all the other members of this committee who have long had a special interest in relationships between international trade and international security.

Senator **Byrd**. Mr. Chairman, I thank the able Senator from Minnesota.

Senator **Roth**. Senator Chafee.

Senator **Chafee**. Thank you, Mr. Chairman. I want to congratulate the minority leader for bringing this to our attention. It came to our attention last Friday, and it is something that we certainly have to devote serious thought to. I come, as I mentioned the other day, from a machine tool State which has been ravaged by the imports; and we are put off under this section 232. It isn't that they don't receive much satisfaction, as much as it takes so long to get any kind of an answer. So, we are going to look into next with our Trade Bill, and I think you have made a very worthwhile contribution to initiate it. Thank you.

Senator **Byrd**. Mr. Chairman, I thank my friend, the able Senator from Rhode Island.

Senator **Roth**. Senator Danforth.

Senator **Danforth**. Mr. Chairman, thank you very much. Senator Byrd, thank you. I know it is a long shot; I guess passing any significant legislation is difficult, but I would hope that we wouldn't give up on the opportunity to pass a significant trade bill, whether the President will end up signing it or not. That remains to be seen. But it seems to me that, now that the House has acted, it really is incumbent on us in the Senate to make an effort to pass the Trade bill, which includes not only a reform of section 232, but other things as well. Clearly, if we were to allow such a bill to become a Christmas tree with everybody adding every idea that they have ever had about trade on it, there is no chance in the time remaining, and the minority leader is quite correct.

But I just wonder if it would be possible if we on the Finance Committee could reach a fairly quick consensus within this committee as to some improvements, including 232, which we could accomplish this year if, with the help of our leader and you, Senator Byrd, and we could maybe reach a time agreement and some limitation so that it isn't just totally openended on the floor of the Senate, so we could get something useful passed this year.

Senator **Byrd**. Mr. Chairman, I compliment the distinguished Senator from Missouri for the work that he has done in the past in his support of legislation of this kind. He has contributed much. As far as I am concerned, give us a good section 232 and a good bill, and we can vote on it in 10 minutes over there. Of course, that is not very realistic; we know that, but you can be assured I will do everything I can do to help to get this legislation to the floor, help to work out a time agreement. I have worked out more time agreements, I guess, than any two majority leaders in the history of the Senate; and I would certainly be glad to extend hours or whatever is necessary in the effort to work out a time agreement, and get a bill passed, and to conference.

The House has done it work, and it did it early; and the other body should be commended. I think the onus is on us. The spotlight is on us. I think we have to answer to the needs of our time and we ought to do it. We still have a little time. We will do everything we can. I assure the distinguished Senator that I will certainly bend every effort, climb the highest mountain, wade the deepest river, and use any little talent that I may have in that direction.

Senator **Danforth**. I very much appreciate that.

Senator **Byrd**. If you can get that kind of a promise out of the majority leader, I think we are more than halfway there.

Senator **Danforth**. I don't know about the river wading part, but I have talked to the majority leader——

[Laughter.]

Senator **Danforth**. I have talked to him several times about it. I know that he does hope to bring a trade bill to the floor. I guess the issue is how long would it take on the floor. In 1984, the last time we had a major trade bill, as I recall it was a couple of weeks on the floor; and I think that the question is whether we can limit it sufficiently so that, while it might not be the most comprehensive bill in the world, at least it will make some positive contributions to trade legislation and would be something we could pass this year.

Senator **Byrd**. If the two leaders and all the Senators can agree to let the other Senators have a fair shot at their amendments, I think they are all entitled to offer amendments, we will do our best to reduce to a minimum number those amendments; and we ought to be able to do this. I don't know any piece of legislation that is more important, more incumbent upon the Senate to pass and get to conference than this bill.

Senator **Roth**. Thank you very much, Senator Byrd. We greatly appreciate your being here today. We look forward to working with you in a bipartisan spirit to get legislation that will meet the problem of assuring this country an adequate security base. Thank you very much.

Senator **Byrd**. I thank all the Senators on the committee.

Senator **Roth**. At this time, I don't believe the House delegation has been able to return, so we will proceed with the Under Secretary of Defense for Policy, a good friend, the distinguished Under Secretary Ikle. Mr. Secretary, we are always pleased to have you here. We think that you can provide great insights on this key problem.

I see the House members are here. I apologize, but if you don't mind, I know that they probably face other votes, so at this time, it is my pleasure to welcome a panel consisting of the Honorable James Jones, Glenn English, Wes Watkins, and Dave McCurdy, who all come from the State of Oklahoma. Gentlemen, we are delighted to have you here. The time is 10:30; we have a full schedule for this morning. We want to give each of you your opportunity, but we would appreciate it if you would summarize your testimony.

[The prepared written statement of Senator Byrd follows:]

AUGUST 13, 1986

NATIONAL SECURITY TRADE TESTIMONY

MR. BYRD:

MR. CHAIRMAN, I AM PLEASED TO HAVE THE OPPORTUNITY TO TESTIFY ON MY PROPOSED CHANGES TO THE NATIONAL SECURITY TRADE PROVISION -- SECTION 232 OF THE TRADE EXPANSION ACT OF 1962 -- AS EMBODIED IN THE NATIONAL SECURITY TRADE ACT OF 1986 WHICH SENATOR ROTH AND I WILL INTRODUCE LATER TODAY. I THANK SENATOR ROTH FOR HIS HELP IN DRAFTING THIS IMPORTANT LEGISLATION.

THIS LEGISLATION IS SIMILAR IN SCOPE TO THE BILL I INTRODUCED AS THE NATIONAL SECURITY TRADE ACT (S. 1533) ON JULY 31, 1985, AND IS SIMILAR TO THE AMENDMENT I OFFERED TO THE DEPARTMENT OF DEFENSE AUTHORIZATION ON SATURDAY, AUGUST 9, 1986.

SINCE SECTION 232 WAS ENACTED IN 1962, 16 PETITIONS ALLEGING A THREAT TO NATIONAL SECURITY HAVE BEEN FILED. THIS IS NOT A LANDSLIDE OF CASES, NOR SHOULD IT BE. THE LANGUAGE OF THE STATUTE AND THE LEGISLATIVE HISTORY ARE QUITE CLEAR IN ESTABLISHING WHAT KINDS OF CASES RISE TO THE URGENCY OF A THREAT TO NATIONAL SECURITY. THE STATUTE DESCRIBES IN DETAIL THE FACTORS TO BE WEIGHED IN DECIDING WHETHER OR NOT THERE EXISTS A NATIONAL SECURITY QUESTION. BUT IT IS VERY CLEAR FROM THE LEGISLATION AND THE HISTORY BEHIND IT THAT CONGRESS INTENDED THAT THE STATUTE FUNCTION TO EFFECTIVELY PREVENT THE DESTRUCTION OF AMERICAN INDUSTRIES WHICH ARE VITAL TO THE NATIONAL SECURITY. INDEED, SECTION "C" REQUIRES THAT THE PRESIDENT "RECOGNIZE THE CLOSE RELATION OF THE ECONOMIC WELFARE OF THE NATION TO OUR NATIONAL SECURITY, AND ... TAKE INTO CONSIDERATION THE IMPACT OF FOREIGN COMPETITION ON THE ECONOMIC WELFARE OF INDIVIDUAL DOMESTIC INDUSTRIES."

THE LEGISLATIVE HISTORY PROVIDES AN UNMISTAKABLE INDICATION OF CONGRESSIONAL INTENT. WHEN THE PREDECESSOR STATUTE WAS FIRST CONSIDERED IN 1955, CONGRESS EXTENDED THE REACH OF PRIOR LAW WHICH DEALT ONLY WITH ISSUES OF "NATIONAL DEFENSE" SO THAT THE ACT WOULD ENCOMPASS ANY INDUSTRY IMPORTANT TO "NATIONAL SECURITY."

DESPITE A CONSISTENT EFFORT TO STRENGTHEN THE STATUTE, CONGRESSIONAL INTENT REMAINS FRUSTRATED BY INACTION ON THE PART OF SUCCESSIVE ADMINISTRATIONS. FOR A CONFUSING AND SOMETIMES ELUSIVE LITANY OF REASONS, PRESIDENTS HAVE NOT GRANTED RELIEF TO ANY INDUSTRIES FILING PETITIONS UNDER SECTION 232. EXPERIENCE HAS SHOWN THAT SUCCESSIVE ADMINISTRATIONS ARE WILLING TO WAIT IN HOPES THAT THE PROBLEM GOES AWAY, RATHER THAN EXPOSE THEMSELVES TO CHARGES OF PROTECTIONISM.

WELL, THE PROBLEMS HAVE NOT GONE AWAY. BUT, IN THE CASE OF FERROALLOYS AND MACHINE TOOLS, THOSE INDUSTRIES VERY NEARLY HAVE.

AS THESE CHARTS SHOW, FROM THE TIME THE COMPLAINTS WERE FILED UNTIL THE PRESENT, THE FERROALLOY AND MACHINE TOOL INDUSTRIES HAVE EXPERIENCED DRAMATIC LOSS IN MARKET SHARE TO IMPORTS. FERROALLOY IMPORTS HAVE CLIMBED FROM AROUND 55% OF THE U.S. MARKET IN 1981 TO LEVELS THAT COULD EXCEED 71% IN 1986, BASED UPON TOTALS THUS FAR THIS YEAR. FERROALLOY EMPLOYMENT HAS FALLEN PROPORTIONALLY, FROM 1981 TOTALS OF ABOUT 6700 TO AROUND 3600 THIS YEAR. LIKEWISE, MACHINE TOOL IMPORTS HAVE GONE FROM ONE THIRD OF THE U.S. MARKET WHEN THAT INDUSTRY FILED FOR RELIEF IN 1983 TO AN ESTIMATED 53% THIS YEAR.

HOW IS IT THAT ANY PRESIDENT OR ANY ADMINISTRATION WOULD BE WILLING TO LET A VITAL ELEMENT OF OUR DEFENSE PRODUCTION

BASE DISAPPEAR WITHOUT ACTION? OUR TRADING PARTNERS IN EUROPE AND JAPAN WOULD NOT BE SO COMPLACENT. INDEED, IN THE CASE OF FERROALLOYS, THE EUROPEAN AND JAPANESE GOVERNMENTS HAVE IN PLACE NATIONAL PLANS TO ASSURE THE SURVIVAL OF CRITICAL FERROALLOY PRODUCTION CAPACITY.

BUT IN THE UNITED STATES, I REGRET TO SAY THAT WE OFTEN REFUSE TO SEE THE FIRE UNTIL WE FEEL THE HEAT. UNLESS WE ARE AT WAR OR OTHERWISE FACE A CONSPICUOUS NATIONAL CRISIS ON THE ORDER OF THE GAS SHORTAGE OF A DECADE AGO, OUR GOVERNMENT IS OFTEN SLOW TO RECOGNIZE OUR DEFENSE NEEDS. WE SEEM DOOMED TO REPEAT IN EVERY GENERATION THE MISTAKES THAT ERODE OUR DEFENSE PRODUCTION ASSETS TO THE POINT THAT WE ARE LEFT SCURRYING TO REBUILD AN INDUSTRIAL BASE THAT IS THE PRODUCT OF YEARS OF NEGLECT. THE ADMINISTRATION°S LATEST PROPOSAL TO REDUCE THE STRATEGIC STOCKPILE AND ITS INACTION ON THE STRATEGIC PETROLEUM RESERVE ARE RECENT EXAMPLES OF THIS TREND.

LET ME DESCRIBE WHAT THIS LEGISLATION WOULD DO.

FIRST, THE LEGISLATION ESTABLISHES A TIME CERTAIN FOR PRESIDENTIAL ACTION ON ANY PETITION. WITHIN 90 DAYS OF THE TIME THE SECRETARY OF COMMERCE -- AND THE SECRETARY OF DEFENSE -- REPORT THEIR DETERMINATION TO THE PRESIDENT, HE MUST ACT, OR STATE WHY HE HAS REFUSED TO ACT ON A MATTER THAT COULD IMPACT UPON THE NATIONAL SECURITY. UNDER PRESENT LAW, THERE IS NO TIME LIMIT. WE HAVE SEEN PETITIONS BY THE FERROALLOYS INDUSTRY AND THE MACHINE TOOLS INDUSTRY DRAG ON MONTHS AND MONTHS WITHOUT RESOLUTION.

AMERICAN COMPANIES DESERVE THE CERTAINTY OF A RESPONSE -- AND WE ALL NEED TO KNOW WHETHER THE NATIONAL SECURITY IS THREATENED AS A RESULT OF IMPORTS. ONCE AN INDUSTRY IS GONE, IT IS TOO LATE.

SIMILARLY, THE TIME WHICH THE SECRETARY OF COMMERCE AND THE SECRETARY OF DEFENSE HAVE TO MAKE SUCH A DETERMINATION IS REDUCED TO SIX MONTHS. I DO NOT BELIEVE IT IS UNREASONABLE TO REQUIRE THAT A MATTER WHICH MAY INVOLVE NATIONAL SECURITY BE DECIDED WITHIN SIX MONTHS. AGAIN, TIME IS OF THE ESSENCE.

SECOND, THE BILL ENLARGES THE ROLE OF THE SECRETARY OF DEFENSE. HE CANNOT SUPPLANT THE ROLE OF THE SECRETARY OF COMMERCE -- NOR SHOULD HE. THE COMMERCE DEPARTMENT HAS MUCH OF THE ECONOMIC DATA ON AMERICAN INDUSTRIES AND THE SCOPE OF FOREIGN IMPORTS. BUT THIS IS NOT A CONVENTIONAL TRADE QUESTION. THE LANGUAGE OF THE STATUTE MAKES CLEAR THAT THE THREAT OF INJURY TO NATIONAL SECURITY MUST BE ASSESSED AFTER WEIGHING MANY FACTORS -- MANY OF THEM WITHIN THE EXPERTISE OF THE DEPARTMENT OF DEFENSE. FOR THAT REASON, THIS LEGISLATION CALLS UPON THE SECRETARY OF DEFENSE TO MAKE A SEPARATE DEFENSE NEEDS ASSESSMENT WITHIN 3 MONTHS OF THE

TIME A PETITION IS INITIATED, AND THAT THIS REPORT BE INCLUDED IN THE COMMERCE DEPARTMENT°S REPORT TO THE PRESIDENT. MOREOVER, THE BILL REQUIRES A SEPARATE STATEMENT OF CONCURRENCE OR DISSENT FROM THE SECRETARY OF DEFENSE -- THE CHIEF CABINET OFFICER CHARGED WITH RESPONSIBILITY FOR NATIONAL SECURITY DETERMINATIONS.

THIRD, MY BILL ENUMERATES THE AVAILABLE COURSES OF ACTION, SHOULD THE PRESIDENT DETERMINE THAT A THREAT TO THE NATIONAL SECURITY DOES EXIST. THIS IS INTENDED TO BROADEN, NOT LIMIT, THE EXISTING OPTIONS. THE LANGUAGE HERE CLOSELY MIRRORS THE BROAD STATUTORY AUTHORITY UNDER SECTION 301 OF THE TRADE ACT. BUT IT ALSO INCLUDES A PROCEDURE WHEREBY THE PRESIDENT CAN INITIATE NEGOTIATIONS WITH FOREIGN GOVERNMENTS TO RESOLVE THE PROBLEM. REMEMBER, THE STATUTE IS AIMED AT THREATS TO THE NATIONAL SECURITY. IF THE PRESIDENT CAN PUT ANOTHER COUNTRY ON NOTICE THAT THE IMPORTS ARE A POTENTIAL DANGER, AND THAT THE UNITED STATES WILL NOT TOLERATE THAT

DANGER, PERHAPS A MAJOR PROBLEM CAN BE SOLVED BEFORE IT DOES DAMAGE -- TO OUR ECONOMY OR TO OUR RELATIONSHIP WITH ANOTHER COUNTRY. THIS AUTHORITY DOES NOT PERMIT THE PRESIDENT TO BARGAIN AWAY ANY DUTIES OR OTHER EXISTING IMPORT LIMITS. AND, IF THE PRESIDENT CHOOSES THIS PATH, HE HAS 6 MONTHS FROM THE DATE OF SUBMISSION OF THE COMMERCE DEPARTMENT REPORT TO REACH AN AGREEMENT. IF NO AGREEMENT CAN BE REACHED WITHIN THAT TIME, HE MUST ACT, OR PUBLISH IN THE FEDERAL REGISTER THE REASONS WHY HE HAS DECLINED TO ACT.

FINALLY, THIS BILL INCREASES THE VISIBILITY OF THE ENTIRE SECTION 232 PROCESS. THE RESULTS OF THE REPORT OF THE SECRETARY OF COMMERCE, AS WELL AS THE PRESIDENT'S FINAL DETERMINATION, ARE TO BE PUBLISHED IN THE FEDERAL REGISTER -- EXCLUDING, OF COURSE, SUCH INFORMATION THAT MAY BE CLASSIFIED OR DEEMED BUSINESS CONFIDENTIAL. THIS INCREASES THE VISIBILITY OF THE ENTIRE PROCESS. THE PETITIONING PARTIES, THE CONGRESS, AND THE PUBLIC AT LARGE DESERVE TO

KNOW THE BASIS ON WHICH SUCH DECISIONS ARE MADE. THIS STATUTE HAS BECOME A DEAD LETTER AND THE PETITIONERS -- THE FERROALLOYS INDUSTRY AND THE MACHINE TOOL BUILDERS INCLUDED -- HAVE LOST FAITH IN THE OPERATION OF THE LAW. IF THE DATA ARE NOT RESTRICTED FOR A REASON, LET THEM KNOW WHY A DECISION HAS BEEN MADE.

DOES THIS BILL OPEN A BROAD NEW AVENUE OF TRADE RELIEF? IT DOES NOT. HOWEVER, IT DOES CREATE A REALISTIC AVENUE OF RELIEF WHEN VITAL SECTORS OF THE ECONOMY ARE THREATENED BY IMPORTS. IT BREATHES LIFE INTO A MORIBUND STATUTE AND SUPPORTS THE ORIGINAL INTENT OF CONGRESS: THAT NATIONAL SECURITY BE UNDERSTOOD TO ENCOMPASS ECONOMIC SECURITY FOR CRITICAL SECTORS OF OUR INDUSTRIAL BASE.

WHICH COMPANIES CAN EXPECT RELIEF UNDER THIS LEGISLATION? CERTAINLY INDUSTRIES SUCH AS THE FERROALLOY PRODUCERS SHOULD HAVE REASON FOR HOPE. IN ADDITION, CRUCIAL

HIGH TECHNOLOGY SECTORS, SUCH AS THE SEMICONDUCTOR MANUFACTURERS, SHOULD CONSIDER HOW THIS LEGISLATION APPLIES TO THEIR SITUATIONS. EMERGING TECHNOLOGIES SUCH AS FIBER OPTICS AND CERAMICS MAY BE ELIGIBLE. OFTEN, FOREIGN PRODUCTION IN THESE NEW AREAS FAR EXCEEDS DOMESTIC NEEDS AND THE EXCESS IS TARGETED FOR THE U.S. MARKET SO THAT EMERGING INDUSTRIES HERE ARE OVERWHELMED.

WE NEED TO GET BEYOND THE IDEA THAT NATIONAL SECURITY IS SOLELY A FUNCTION OF HOW MANY TROOPS AND WEAPONS WE CAN FIELD. THE ABILITY TO SUSTAIN OUR DEFENSE PRODUCTION BASE AND SUPPORT OUR MILITARY IN TIME OF CRISIS IS AN IMPORTANT MEASURE OF OUR NATIONAL SECURITY -- AND OF OUR STRENGTH AS A NATION. THE ECONOMIC WELL-BEING OF VITAL INDUSTRIES MUST BE AS MUCH OF A NATIONAL PRIORITY AS THE MAINTENANCE OF STRONG ARMED FORCES. I AM CONVINCED THAT THIS LEGISLATION WILL MAKE AN IMPORTANT CONTRIBUTION TO SAFEGUARDING THAT PRODUCTION BASE.

I WOULD POINT OUT TO MY COLLEAGUES THAT ARTICLE XXI OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) SPECIFICALLY ALLOWS A GOVERNMENT TO TAKE ACTION "NECESSARY FOR THE PROTECTION OF ITS ESSENTIAL SECURITY INTERESTS." NOTHING IN THIS BILL ABRIDGES THE AUTHORITY OF THE PRESIDENT. NOTHING HERE REQUIRES THE PRESIDENT TO DO ANYTHING OTHER THAN MAKE A TIMELY DETERMINATION WHEN THIS COUNTRY°S NATIONAL SECURITY IS IN QUESTION. BUT IT PROVIDES AN IMPORTANT EXPRESSION OF CONGRESSIONAL CONFIDENCE IN A STATUTE THAT SHOULD BE THE BASELINE OF OUR TRADE POLICY. WHETHER SENATORS ARE DEVOTED TO A PURIST°S VIEW OF FREE TRADE OR HARDENED BY THE TRADE CRISIS, I HOPE THEY WILL SUPPORT THIS IMPORTANT LEGISLATION.

STATEMENT OF HON. JAMES R. JONES, U.S. CONGRESSMAN FROM THE STATE OF OKLAHOMA

Congressman JONES. We understand, Mr. Chairman. We thank you, Mr. Chairman and members of the committee, for giving us this opportunity to testify. We do have prepared testimony that we would like to have included in the record on behalf of the four of us, which we will summarize.

Senator ROTH. The statement will be included in the record as if read.

Congressman JONES. Thank you very much, Mr. Chairman.

We think these hearings are terribly important to our trade position, and more important to the strength and the viability of the energy industry in the United States. And that is the area on which we would like to concentrate.

I think there can be no question but that a group of OPEC countries has deliberately launched a policy to drive competitors out of the market so that they can regain their world market share. They do this by driving down the price. We see it throughout Oklahoma, where 80 percent of our production is marginal and stripper wells: The way the price is being driven down, these wells are being shut in.

Marginal wells and stripper wells are not likely to be reopened; and if you look at the total U.S. domestic production of oil, around 13 or 14 percent of what we produce in this country comes from marginal or stripper wells. If we continue the slide and the shut-ins that are taking place in this area of domestic oil production, we are going to see a greater reliance on OPEC.

In other words, we are falling into the trap that OPEC is setting for us. We are apparently not learning from history. OPEC has done this twice to us in the last two decades.

So we recommend to this committee two things: one, that you do take action to strengthen section 232 of the Trade Expansion Act of 1962 and, No. 2, that we put maximum pressure on this President and this administration to use the authority he already has under that Trade Act to impose import fees on foreign oil and product to even up, if you will, the taxes paid by foreign production to the level paid on domestic production.

It is a national security problem, and that has been abundantly clear. Even the President's National Security Adviser within the last week has sent a letter to the Congress talking about the national security implications of a decline in the domestic oil and gas industries. We are at war with the OPEC nations. We are losing that war because we are not fighting back, and the only effective way to fight back and to remain secure in our energy needs is to impose an import fee.

The President has this authority. This authority has been used by previous Presidents: President Eisenhower, President Nixon, President Ford, President Carter recommended it to impose a fee. And we feel very strongly that this President ought to do the same thing. If prices continue to decline and to stay in the area where they are now, you are going to see a greater dependence on OPEC. We have already seen that imports amount to nearly 40 percent of our daily consumption; that is up 27 percent from just a year ago.

We see that OPEC is the source of most of that increase in imports and that, if history is any indication, the more we rely on OPEC, the more vulnerable we become and the more certain it is that we are going to see the price dramatically increase to American consumers. And that money will be going overseas; it will not be staying here in the United States to develop jobs.

Mr. Chairman and members of the committee, we think a number of things have to be done to strengthen the United States and our trade policy. We believe that we are being kicked around in world markets by unfair trade practices, and there are two things that can be done: one, to pass the Fair Trade bill that we passed in the House and that is in the Senate's hands now; and No. 2, to strengthen the section 232, the national security part of the Trade Act.

We hope that this committee will act expeditiously. We hope that this committee will put maximum pressure on the administration for an oil import fee. Quite frankly, we would have preferred to do it by legislation. If there had been action last year when Members on our side called for it—Senator Boren and others called for it—perhaps legislation could have been passed. At this late stage—it is unlikely, given those who are from nonproducing States who have a prejudice against the oil industry—it is unlikely that legislation can wind its way through both Houses of Congress and face the uncertainty——

Senator **Roth**. Mr. Jones, we do have a vote, and we are going to have to interrupt the proceedings. I would hope that you could conclude so that, when we return, we could ask for any comments of the others.

Congressman **Jones**. I think the main thing we are trying to say is that, if we rely solely on the legislative route, we are not likely to get any help to keep the domestic oil and gas industry from declining further. That is why it is imperative that the President use his authority under section 232 of the Trade Act to impose an import fee. Mr. Chairman, if you want to vote or whatever, we will——

Senator **Roth**. Senator Boren, did you have a comment?

Senator **Boren**. Mr. Chairman, let me just say that I appreciate the comments that Congressman Jones has made, and there is a great combined knowledge sitting in front of us at this table from our State in terms of understanding what is happening in the industry and its relationship to national security. I agree; many of us will continue to push for a legislative remedy; but as Senator Byrd said a minute ago in relation to another subject, we must make sure that the action doesn't come too late. The way to assure that is to have the President of the United States take the action now that he should be taking under the authority that he already has under section 232, and I join Congressman Jones in hoping that the President will proceed to take that action as soon as possible. And I again apologize that we seem to have votes on both sides of the Capitol conspiring against us this morning. We are glad that you could be here.

Senator **Roth**. We will be in recess subject to recall by the chairman.

[Whereupon, at 10:35 a.m., the hearing was recessed.]

AFTER RECESS

Senator **Danforth**. Gentlemen, my apologies, but you know how it goes. Congressman Jones, am I right that you already have testified?

Congressman **Jones**. Yes.

Senator **Danforth**. And Congressman English is next?

Congressman **Jones**. Senator, the only thing that I would add is that we are facing Gramm-Rudman, and we have got some tough decisions coming up. Take, for example, a $5 import fee. When you consider what that would do to the domestic industry and the income taxes the domestic industry would pay as a result of more stable prices, that would raise $12 to $18 billion a year, and that would be very helpful in some of the deficit problems we have.

Senator **Danforth**. Thank you, sir.

Congressman English.

[The prepared written statement of Congressman Jones follows:]

STATEMENT OF MEMBERS OF OKLAHOMA CONGRESSIONAL DELEGATION JAMES R. JONES, GLENN ENGLISH, WES WATKINS AND DAVE McCURDY

BEFORE THE SENATE COMMITTEE ON FINANCE
AUGUST 13, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THANK YOU FOR ALLOWING MEMBERS OF THE OKLAHOMA DELEGATION TO APPEAR BEFORE YOU ON THE PRESIDENT'S AUTHORITY TO ESTABLISH A FEE ON OIL IMPORTS UNDER SECTION 232 OF THE TRADE EXPANSION ACT OF 1962.

SINCE THE TIME PETROLEUM RESOURCES WERE FIRST DISCOVERED, OR THE CAPACITY OF THIS NATURAL RESOURCE WAS FIRST HARNESSED, MAN HAS DEBATED WHAT WILL HAPPEN WHEN PETROLEUM RESOURCES ARE EXHAUSTED OR NO LONGER AVAILABLE. DEBATE ENSUED IN THE 1970S WHEN THE REALITY OF VOLATILE PETROLEUM SUPPLIES HIT THE FRONT PAGES.

IN THOSE DARK DAYS OF LONG GASOLINE LINES, AND RATIONING OF HEATING RESOURCES -- JUST A FEW YEARS AGO -- PEOPLE WIDELY BELIEVED THAT OIL PRICES WOULD CONTINUE TO INCREASE FOR THE FORESEEABLE FUTURE, UNTIL THE WORLD'S OIL RESOURCES EXTINGUISHED. THEY WERE WRONG.

IN 1986, MANY PEOPLE ACT AS IF THE CURRENT WORLD OIL GLUT, AND THE PRECIPITOUS COLLAPSE OF PRICES IT HAS CAUSED, WILL PERSIST INDEFINITELY. THEY ARE WRONG, AS WELL. IT'S AS IF THE ENERGY CRISIS OF THE 1970S WASN'T EVEN A BLIP ON OUR RADAR SCREEN.

OUR COUNTRY, ALTHOUGH SOME FAIL TO RECOGNIZE IT, NOW FINDS HERSELF IN A DANGEROUS ENERGY PREDICAMENT.

TO ILLUSTRATE THE FACT WE HAVE IGNORED THE OMINOUS SIGNALS BROUGHT ON BY THE VOLATILITY IN WORLD OIL MARKETS, LET'S RECALL WHAT TRANSPIRED IN THE FEW DAYS SINCE THE FINANCE COMMITTEE LAST CONVENED ON THIS SUBJECT.

ON FEBRUARY 28, 1986, BARELY MORE THAN FIVE MONTHS AGO, CERTAIN MEMBERS OF THE OKLAHOMA DELEGATION APPEARED BEFORE THE SENATE COMMITTEE ON FINANCE TO TESTIFY THAT AN OIL IMPORT FEE IS NEEDED IMMEDIATELY TO PROTECT THE NATION'S SECURITY. THE TESTIMONY MENTIONED, THAT "THE UNTHINKABLE LEVEL OF $15 PER BARREL OIL HAS BEEN REACHED." NOW, LESS THAN 160-DAYS LATER -- WHEN THE SITUATION COULD HAVE BEEN AVOIDED HAD OUR PRESIDENT UTILIZED HIS AUTHORITY TO IMPOSE A FEE ON CRUDE OIL IMPORTS -- OUR PRODUCERS ANXIOUSLY ARE AWAITING THE DAY WHEN PRICES CLIMB TO THE $15 LEVEL. AS WE MENTIONED IN FEBRUARY, OIL AT $15 PER BARREL, MEANS ALMOST 60-PERCENT OF ALL STRIPPER WELLS WILL BE SHUT IN. OIL SOLD FOR $10 PER BARREL, WHICH ISN'T THE TROUGH, WILL CAUSE 90-PERCENT OF OUR STRIPPERS TO SHUT IN.

A NATION AT WAR

Both times in the past two decades, when OPEC arbitrarily boosted the price of oil on world markets, our Nation has wrung her hands, but has failed to adhere to the lessons of those events. After both occasions, we were soon paying considerably higher prices, waiting in long lines, and facing a threat to the integrity of our economic system.

OPEC is now precipitating a third energy crisis. Since Saudi Arabia began flooding the world oil market last year, driving prices down 60-percent, our nation has been awash in oil and oil products.

Now there are some who would argue that we should take advantage of OPEC's apparent disarray. That we should drain OPEC first, not America.

Such short-sighted thinking gave us the energy crisis of the 1970s. It will assure energy shortages and supply disruptions in the 1990s.

Those of us who know OPEC, know they have but one goal: Drive competitors out of business, so their market domination will once again assure a stranglehold on oil consumers. OPEC is seeking to reestablish its monopolistic grip by wiping out the demand stimulus that effective conservation measures have produced, and the market share developed by new suppliers in this Nation, as well as Great Britain, Norway, Mexico, and China. OPEC has both barrels of their shotgun loaded (and oiled), and our domestic producers are in the line of fire with no bullets for their guns.

IS OPEC'S OBJECTIVE BEING ACHIEVED? YOU BET IT IS.

ANEMIC PRODUCTION AND RISING DEMAND LEADS TO MORE IMPORTS FROM ABROAD. IN JUNE, OUR RELIANCE ON IMPORTS HIT 39-PERCENT, UP FROM 27-PERCENT JUST A YEAR AGO. OPEC'S SHARE NOW ACCOUNTS FOR 43-PERCENT OF OUR NATION'S IMPORTS, WHILE IT'S SHARE WAS ONLY 36-PERCENT IN 1985. MANY EXPERTS PREDICT THAT OPEC WILL SUPPLY OVER ONE-HALF OF THIS COUNTRY'S IMPORTS IN LITTLE OVER ONE YEAR.

AN ENERGY WAR, MR. CHAIRMAN, IS BEING WAGED AND WE ARE LOSING BY DEFAULT. WE ARE STACKING OIL RIGS FASTER THAN ANY PEACETIME ARMY HAS EVEN STACKED ITS RIFLES, FASTER THAN ANY NAVY HAS DRYDOCKED ITS SHIPS, OR ANY AIR FORCE HAS SENT ITS WAR PLANES TO THE BONEYARD.

NATIONAL SECURITY INTEREST

THERE IS NO QUESTION THAT AMERICAN SECURITY IS UNDER ATTACK FROM FORCES WHOSE ECONMIC INTERESTS DIFFER FROM OUR OWN. THAT POINT WAS AMPLIFIED WHEN NATIONAL SECURITY AFFAIRS ADVISER JOHN M. POINDEXTER TOLD THE CONGRESS LAST WEEK THAT PRESERVING THE VITALITY OF THE DOMESTIC OIL AND GAS INDUSTRY IS OF CRITICAL IMPORTANCE TO NATIONAL SECURITY.

NOW THAT THE PRESIDENT'S OWN NATIONAL SECURITY ADVISER HAS MADE THIS DETERMINATION, WE FEEL THE LAW COMPELS AND MORALLY OBLIGATES THE PRESIDENT TO EXERCISE HIS AUTHORITY UNDER SECTION 232 OF THE TRADE EXPANSION ACT OF 1962 TO IMPOSE AN OIL IMPORT FEE.

THE DETERMINATION AND PLEA MADE TO CONGRESS BY MR. POINDEXTER IS NOT WITHOUT VALIDATION. A RECENT STUDY SUGGESTS

THAT IF PRICES REMAIN ROUGHLY AT THE $15 A BARREL LEVEL, THE NET "EXTRA CALL" ON OPEC OIL COULD REACH 6 TO 7 MILLION BARRELS A DAY, BRINGING TOTAL OPEC PRODUCTION TO SOME 23 TO 24 MILLION BARRELS A DAY IN 1990. WHAT DOES THAT MEAN?

OPEC HOLDS ABOUT THREE-QUARTERS OF THE NON-COMMUNIST WORLD'S OIL RESERVES AND ABOUT TWO-THIRD'S OF TOTAL WORLD RESERVES. IT IS OPEC OIL WHICH MUST MOSTLY SUPPLY INCREASED WORLD DEMAND. WHEN OPEC OPERATES AT A LEVEL OVER 80-PERCENT OF ITS CAPACITY, HISTORY SHOWS THAT PRICE INCREASES AND SUPPLY DISRUPTIONS SOON FOLLOW. IN FACT, IN TWO OF THE ELEVEN YEARS STUDIED, WHEN OPEC OPERATED BETWEEN 89 AND 90-PERCENT CAPACITY, PRICES ROSE BETWEEN 40 AND 45-PERCENT.

OPEC CAPACITY IS NOW ABOUT 27 MILLION BARRELS A DAY. EIGHTY PERCENT OF THAT CAPACITY IS 22 MILLION BARRELS A DAY. SINCE OPEC IS CURRENTLY PRODUCING ABOUT 17 MILLION BARRELS A DAY, BUT IS PREDICTED TO BRING TOTAL PRODUCTION TO 23 MILLION BARRELS OPEC WILL BE IN A CONTROL SITUATION, OVER 80-PERCENT CAPACITY, IN LESS THAN 4 YEARS.

BY THAT TIME, 1990, OUR MORIBUND DOMESTIC INDUSTRY WILL HAVE VANISHED.

IMPLEMENTATION OF SECTION 232

THE PRESIDENT'S AUTHORITY TO ESTABLISH A FEE ON OIL IMPORTS IS BASED ON SECTION 232 OF THE TRADE EXPANSION ACT OF 1962. THE ACT PROVIDES THAT UPON A FINDING BY THE SECRETARY THAT A COMMODITY IS ENTERING THE COUNTRY IN SUCH QUANTITIES OR UNDER SUCH CIRCUMSTANCES AS TO THREATEN TO IMPAIR NATIONAL SECURITY, THE PRESIDENT MAY TAKE SUCH ACTION AS HE DEEMS NECESSARY TO

ADJUST THE IMPORTS OF THE COMMODITY.

PURSUANT TO THIS AUTHORITY, IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS WERE INVESTIGATED IN 1959, 1975 AND 1979. IN EACH CASE, IT WAS FOUND THAT IMPORTS OF PETROLEUM WERE ENTERING THE COUNTRY IN SUCH QUANTITIES AND UNDER SUCH CIRCUMSTANCES AS TO IMPAIR NATIONAL SECURITY.

THIS AUTHORITY SHOULD HAVE BEEN EXERCISED MONTHS AGO. IT SHOUD DEFINITELY BE EXERCISED NOW THAT THE NATION'S SECURITY EXPERTS HAVE FOUND A NATIONAL SECURITY THREAT TO EXIST.

CONCLUSION

WE APPEAR BEFORE YOU TODAY BECAUSE WE HOPE THIS COMMITTEE WILL JOIN US IN CALLING UPON THE PRESIDENT TO EXERCISE HIS AUTHORITY UNDER SECTION 232.

THAT IS, REALISTICALLY, THE ONLY ROUTE AVAILABLE TO US AT THIS HOUR. OUR LEGISLATIVE OPTIONS -- WHICH MEMBERS OF THE OKLAHOMA DELEGATION HAVE BEEN PURSUING SINCE I FIRST CALLED FOR AN OIL IMPORT FEE IN MARCH 1985 IN TESTIMONY BEFORE THE HOUSE BUDGET COMMITTEE, AND DAVID BOREN UNDERTOOK WITH INTRODUCTION OF LEGISLATION IN JULY OF THAT YEAR -- ARE FORECLOSED. WE ARE PUTTING THE FINAL COPY ON THE 99TH CONGRESS TO BED. LEGISLATIVE ACTION MIGHT HAVE BEEN FEASIBLE IF THE PRESIDENT HAD CHOSEN TO ASSIST OUR EFFORTS. BUT HE DID NOT CHOOSE TO HELP.

NOW THAT THE PRESIDENT'S NATIONAL SECURITY EXPERTS, THOSE WHO SHOULD KNOW, FEEL AMERICAN SECURITY IS THREATENED, THE PRESIDENT SHOULD BE COMPELLED TO ACT.

YOUR HELP IS NEEDED BECAUSE THERE ARE STRONG VOICES IN THIS ADMINISTRATION WHO CONTINUE TO RESIST ANY EFFORT TO HELP THS EMBATTLED INDUSTRY.

FOR EXAMPLE, LESS THAN 10 DAYS AGO, JAMES MILLER, OMB DIRECTOR, TOLD GLENN ENGLISH THAT IF OKLAHOMA OIL PRODUCERS AND FARMERS CAN'T PRODUCE AS CHEAPLY AS THE SAUDI'S, THEY SHOULD BE IN ANOTHER BUSINESS.

ENERGY SECRETARY JOHN HERRINGTON COMMENTS, A FEW DAYS LATER, ON THE ALL-BUT-MEANINGLES OIL PRODUCTION ACCORD, WERE EQUALLY INSENSITIVE HERRINGTON CRITICIZED THE OPEC PRODUCTION ACCORD SAYING THIS WILL REESTABLISH THE DOMINANCE OF OPEC. WE CONTEND THAT WITHOUT IMPOSITION OF AN OIL IMPORT FEE THIS ADMINISTRATION IS HELPING TO BUILD OPEC'S DOMINANCE AND CONTROL.

IF THE PRESIDENT FAILS TO IMPLEMENT THE ADVICE OF HIS NATIONAL SECURITY EXPERTS, AND IMPOSE AN OIL IMPORT FEE, THIS COMMITTEE -- THROUGH YOUR HEARINGS TODAY -- SHOULD DEMAND TO KNOW WHY HE IS NOT OBEYING THE LAW.

YOUR RESPONSIBILITY AS THE COMMITTEE OF JURISDICTION OVER OUR NATION'S TRADE LAWS -- DEMANDS NOTHING LESS.

STATEMENT OF HON. GLENN ENGLISH, U.S. CONGRESSMAN FROM THE STATE OF OKLAHOMA

Congressman **English**. Thank you, Senator, I appreciate that. [Laughter.]

Senator **Danforth**. I am selective in who I say that to. [Laughter.]

Congressman **English**. I know. I would like to point out, though, one facet of the testimony and perhaps underscore that; and that has to do, of course, with the recent statements of the National Security Adviser, Mr. Poindexter, in which he underscored how vital it is to our national security that we do have a vigorous domestic oil and gas industry. That then raises the question, if that is what the National Security Adviser is pointing out to the President and to the administration, why this administration has not acted as far as an oil import fee is concerned. I think some recent testimony that took place over on the House side before the Government Operations Committee may shed some light on that fact.

We have, in fact, the Director of the Office of Management and Budget, James Miller, in response to questions that I asked stated in effect that the administration believes that if oil can be produced cheaper in Saudi Arabia than it can be produced say in Oklahoma, then people in Oklahoma ought to be getting into some other business. Well, obviously, if the administration has that kind of economic theory and has now been frozen into that approach to the point that they are willing to ignore the advice of the National Security Adviser; namely, how important the domestic gas and oil industry is to our national security interest, then I think indeed it shows that this administration has been blinded to the reality of the dangers that lie ahead.

And I think, Mr. Chairman, that unless the Congress acts, particularly unless this committee acts, we may in fact be dooming ourselves to repeat the experiences that we all went through in the 1970's. And I think that certainly would not only be detrimental as far as the American people are concerned—as far as the consumers are concerned—but as far as the overall national security is concerned.

So, I think there is a need—a desperate need—for this committee to strongly consider taking action and passing an oil import fee. Mr. Chairman, we have rigs that are being stacked in the State of Oklahoma; and the reason those rigs are being stacked is because the deck is stacked against the oil and gas producers in this country because of the actions of Saudi Arabia.

So, I would hope this committee would act. I would hope that perhaps we can get the President's attention, that we can break the administration free to finally act and carry out their responsibilities in imposing an oil import fee. Thank you, Mr. Chairman.

[The prepared written statement of Congressman English follows:]

STATEMENT OF CONGRESSMAN GLENN ENGLISH
BEFORE THE SENATE FINANCE COMMITTEE

AUGUST 13, 1986

Mr. Chairman, members of the Finance Committee, I appreciate your graciousness in allowing me to appear before you today.

My colleagues and I are here to discuss the President's authority, under Section 232 of the Trade Expansion Act of 1962, to impose a fee on oil imports. Provisions of the Act provide that upon finding that a commodity is entering the country in such quantities or under such circumstances as to threaten or impair national security, the President may take such action as he deems necessary to adjust the imports of the commodity.

Mr. Chairman, the domestic petroleum industry is hurting. Oil rigs are being stacked because the deck is stacked against the industry. OPEC has driven prices down to the point where it is no longer profitable to drill new wells or to continue the operation of many of those on line. In fact, wells are being shut-in today, never again to resume production.

This situation has devastated the economy of Oklahoma. Thirty-one banks have failed in my state since 1982 and the number of active drilling rigs has dropped from 900 to less than 100. 50,000 energy related jobs have been lost and farm foreclosures are at record numbers. In the first seven months of 1986, approximately 7000 bankruptcy petitions were filed. Most of these bankruptcies are attributable to the collapse of energy and agriculture prices.

The problem we face is not just an Oklahoma problem or a regional problem. It is national in scope because the very security of our Nation is at risk. Even the President's own National Security Advisor, Admiral John Poindexter, has advised that in a time of crisis our nation's security would be threatened.

My colleagues from energy producing states have recognized for some time the seriousness of the situation. A member of this committee, Senator David Boren, proposed an import fee a number of months ago and Congressman Jim Jones, my colleague from Oklahoma acted similarly in the House. I supported the import fee then and I support it now. Unfortunately, the President was not receptive. Since then, the situation in the "oil patch" has continued to deteriorate--bankruptcy petitions continue to be filed, stores continue to close and more and more homes stand vacant.

The domestic petroleum industry is facing disaster. A well known and successful former quarterback is quoted as saying, "I never got beat, I just ran out of time". The domestic petroleum industry isn't beaten, at least not yet. But, the clock is running and many are playing hurt. Its time to act!

Many believe that the administration's lack of attention to financial disaster in the oil and farm sectors indicate poor advice is being given to the President. That may be true, but a recent exchange I had with OMB Director Jim Miller leads me to believe otherwise. In testimony before the House Committee on Government Operations, Mr. Miller told me that if Oklahoma oil producers and farmers can't produce as cheaply as the Saudi's, they should be in another business. The complete exchange between Mr. Miller and myself is printed in yesterday's (August 12) Congressional Record and I would urge that every member of this committee read Mr. Miller's testimony at the earliest possible moment. In doing so, it will become clear that neither the economic hardships facing the Oklahoma energy industry nor the threat to national security posed by the increasing reliance on imports can change this administration's philosophy.

This unshakable position was reaffirmed again last week when, in response to my call for an oil import fee, I received a letter on behalf of the President from Presidential Assistant William Ball. Mr. Ball stated this administration continues to remain convinced that the best way to maintain our energy security and a viable energy industry is through the proper use of tax incentives and reliance on the marketplace, not through market intervention and regulation. In other words, this administration is gambling that the free market will solve all our energy and economic problems.

I have not had major differences with this administration over energy policy in the past and I certainly agree that the proper use of tax incentives are necessary for a healthy domestic petroleum industry. Reliance on the marketplace is fine as long as the market is free. Market intervention and regulation are contrary to the very nature of our society, but intervention by the OPEC governments, principally the Saudis, is at the root of the problem today. It is Saudi government policy to flood the market and drive prices down to the point that producers in Oklahoma, Texas, and Louisiana will be forced out of business. That is not the free market and thats not fair trade. We must, for our own defense, act and act now to protect our domestic petroleum industry before it is to late.

There exists today a very real and present danger to our national security and that danger continues to grow everytime a producing well is shut-in or a producer fails to obtain the necessary investment capital to drill another well. Admiral Poindexter's warning should be heeded and the President has the authority to act. As the committee of jurisdiction over our Nation's trade laws, I urge that you urge the President to follow the advice of his national security advisors and act to preserve the domestic petroleum industry through the imposition of an oil import fee.

Again, thank you for the opportunity to appear before you today.

STATEMENT OF HON. WES WATKINS, U.S. CONGRESSMAN FROM THE STATE OF OKLAHOMA

Congressman WATKINS. Thank you, Mr. Chairman. I would like to thank all of you, Senators, for having these hearings.

I would just like to make a couple of points for you to reflect on. Today we have the lowest number of oil rigs drilling in the United States that we have had since the early 1930's, or when the records started being kept on drilling rigs. I reflect on the fact that this was prior to World War II. That was prior to the really big automotive influx in this country. It was prior to many of our basic industries being built. And yet, today we have—this last month—the lowest number ever recorded in the history of our country.

That has brought about a number of things that have caused an economic disaster in the basic industry that we depend on across this country. To bring it closer to home, without taking action of section 232 of the Trade Expansion Act of 1962, which could have prevented all this, we have had the largest number of bankruptcies in the history of our State of Oklahoma, the largest number of bank failures throughout the several State area. There were four the other day in Texas; and the same day, we had the 30th one go down in Oklahoma, and many other economic disasters throughout an area that is dependent on a very vital industry.

Besides the economic dangers that are prevailing, the national security danger, I would like for you to just reflect with me a little bit about where we have backed ourselves into.

There are only three ways we can solve the dilemma that we are in. One, Senator, is a war in the Middle East. We can remain at the mercy of OPEC, if that is what we want to do and become even more dependent; or we could place an import fee on which could have been done and should have been done 18 months ago. It should be done immediately. It should be done in the next week—whenever—to get us back in a situation where we are not being dependent on other areas.

Yes, we can brag about the fact that we are not into a military war today, but without question, I think most of us can verify that we are in a trade war and we are being whipped into a situation of submission to the extent of becoming dependent on foreign oil throughout this country.

They have unilaterally disarmed us, I think I heard one of the Senators state before, especially disarmed us in the conventional forces when you do not have a domestic oil industry to move those forces. And we also find today that there is much, much discussion about SDI. SDI might be the defense initiative of the future, but the defense initiative that we have to have today is an oil import fee so we can carry out the conventional conflict, if necessary, or be able to sustain one; or we are backing this President or future Presidents into pushing the button of nuclear war. It boils down to being that simple.

I, like many of you, are probably moved with the emotions of patriotism—the performances of patriotism—during Liberty Week, Independence Week. Let me just leave you with this word. Our country cannot remain free and our country cannot remain independent if we become dependent on the basic industries that go to the defense of our Nation and that freedom that we so cherish.

Thank you for allowing me to come over and share those few remarks with you.

Senator ROTH. Thank you. Congressman McCurdy.

STATEMENT OF HON. DAVE McCURDY, U.S. CONGRESSMAN FROM THE STATE OF OKLAHOMA

Congressman McCURDY. Thank you, Mr. Chairman. I will try to be brief. I concur in and want to echo the comments of my colleagues and earlier those of Senator Boren and also Senator Bentsen. Senator, I serve on the House Armed Services Committee and also on the Permanent Select Committee on Intelligence in the House, and I know there are a number of members here who serve on the Arms Services Committee in the Senate—Senator Grassley—and also the Intelligence Committee—Senator Bentsen and Senator Durenberger who was here earlier, and Senator Boren serves on that.

And I wanted to just reiterate the point that energy independence is a critical factor in our national security, and I think it is one that has been neglected in the past. We have heard so often, like Napoleon said, that an army runs on its stomach; well, an army today runs on oil and gas, and we need those fuels and we need that source—independent source—of energy.

My district, if it were a State, would be the 10th largest crude-oil producing State in the United States. And we are primarily dependent upon stripper production for that source of crude oil. And the declining production and the capping of those stripper wells is having a terrible impact, not only in our district but I think it shows and demonstrates the concentration of those resources. And if we continue to lose that production, I think it is going to have an extremely detrimental impact on our national security ability and our readiness posture. Three counties within that district produce most of the 100,000 barrels or more that come out of my district. Unemployment in those counties today exceeds 13 percent, and I think it is reflective of many other areas in the Southwest, certainly Texas and Louisiana.

And we have seen, I think, a decline that is not going to turn around in the near future, and I would just again point out that the most shocking image or picture I could imagine is if we were to have an international crisis, just to see some of those tankers steaming from the Middle East going up in smoke; and I think that is something that we talk about when we talk about maintaining the sea lines of communication. It is a very critical area, and one that we need to be concerned about.

We are losing refining capacity, producing capacity. I have had refineries close in my district that had been operating for 35 years or more; and when we lose them and when we cap those wells, they will no longer be there and they cannot be started up in time for a crisis.

And I think that is something that each of us who spend the majority of our time dealing with national security and armed services and the Department of Defense are vitally concerned about.

And I just wanted to make that point, and I appreciate the opportunity to appear before the panel today.

Senator ROTH. I am going to ask the panel here to be as brief as they can with their questions because we still have a considerable distance to go before we can complete the hearing. I have basically just two questions.

First of all, what action if any has the House Ways and Means Committee taken on your proposed legislation? Do you see such legislation emerging from the House of Representatives?

Congressman JONES. As long as the President maintains his opposition, there is no chance of its passing in the House. It would not even be given a hearing. That is the major flaw so far. The problem is that we are so late in the legislative cycle now, with so many other things on the agenda before this Congress adjourns, it is less likely that this is going to be accomplished legislatively.

That is why we are appealing to this committee. We are appealing to Congress and to the administration. Now that the National Security Adviser to the President has pointed to the national security implications of a declining domestic oil industry, we are now urging that the President use the authority he already has to impose an import fee.

Senator ROTH. I think it is always nice to try to point the finger to the President, but the fact is that in both the House and Senate there is no broad consensus. As I sit in the deliberations of the tax conference and listen to the House conferees, you get a very different approach, a different attitude. I think there is general concern among all people about the state of the industry, but I must confess that there is certainly no broad consensus for this kind of approach.

Congressman JONES. I would just comment there is not a broad consensus on a number of matters pertaining to our trade policy; but where the national security is involved, the President has a special responsibility to look beyond that and to help develop that consensus, particularly when he has the authority to act already.

Congressman MCCURDY. Senator, if I may, I just want to make one point on that. You can't have it both ways. We can't have the administration who comes to Texas in one speech citing the energy crisis and the impact it has on energy independence and our future dependence on foreign sources of oil, and then go back to Delaware and take credit for reducing the consumer prices on gasoline. You can't have it both ways, and I think the administration has gotten caught up in that trap some. And I think that it is important that we get beyond parochial concerns.

I mean, an oil import fee has a great impact on some of the coastal States, but we have to look beyond that and look at what deficit impacts it has and look at the security impact and also what stability in the producing areas it has.

Senator ROTH. Well, my only comment is that there is in fact deep division on the question of an oil import fee. And I would point out that the House of Representatives hasn't hesitated where they disagree with the President to move legislation ahead. So, I think that is really the problem. There is no broad consensus that this is the cure.

The CHAIRMAN. No questions.

Senator **Roth**. I will turn it back to you, Mr. Chairman.

Senator **Bentsen**. Mr. Chairman, if I might?

The **Chairman**. Senator Bentsen.

Senator **Bentsen**. Mr. Chairman, I think the comments about no broad consensus are correct; but I had seen a broad consensus come about when a President has taken strong leadership, something that affected the national security. Frankly, I don't think this is a regional issue, even though we have four Congressmen from Oklahoma here to testify about what has happened to their State. The oil-producing States get the immediate dire impact.

It is not just a regional issue because this is suffered by the entire Nation. Those economists who were talking about the great boom because of the low price of oil and how we were going to have 4.5 percent GNP in the second half, it is just not happening. And we have seen the incredible cutback in capital investment in those States that has affected the entire Nation. And the GNP has not gone to what they had projected. In my opinion, will be something between 2½ and 3. Now, when you were talking about strippers, they are 73 percent of the oil wells in this country and they are backbone of it. Many of them require tertiary recovery; and when you do that, you get to a cost of about $14.59 a barrel. They are being closed down.

One of the estimates I have says we will lose some 640,000 barrels this year in cutback, rarely put back in use.

I want to thank this delegation. I strongly agree with them on an oil import fee. I want to particularly single out the distinguished dean of that delegation because I have dealt with him so many times in the conferences between the House Ways and Means Committee and the Finance Committee. I find him one of the most articulate and able Members of the Congress, one who has long recognized this problem that is essential to the national security of our country. I am pleased to hear the testimony of these able Members of the House, and I agree strongly with them.

The **Chairman**. Any other questions?

[No response.]

The **Chairman**. Fellows, thank you for coming back. We appreciate it. Now, if we can take Dr. Ikle, the under Secretary of Defense for Policy; and Dr. Paul Freedenberg, the Assistant Secretary for Trade Administration; and Dr. Harold Brown, the chairman of the Foreign Policy Institute of the Johns Hopkins School of Advanced International Studies. Dr. Ikle, why don't you go ahead?

STATEMENT OF FRED C. IKLE, PH.D., UNDER SECRETARY OF DEFENSE FOR POLICY, DEPARTMENT OF DEFENSE, WASHINGTON, DC

Dr. **Ikle**. Thank you, Mr. Chairman, for inviting us here. I will summarize my statement. I will focus on the importance of assuring an adequate industrial mobilization base for national security. I realize, of course, that the purpose of today's hearing is to discuss primarily amendments of section 232, but the rationale here is national security.

Our ability to mobilize for war is critical for our defense policy. On this point, I fully agree with all the distinguished witnesses who preceded me. And the basic reason we must recall why mobilization can help our defense effort is that our economy is larger, more creative, technologically more advanced than that of our potential enemy.

The Soviet Union diverts 15 to 20 percent of its gross national product to its Military Establishment. We spend about 6 percent on defense; our allies spend even less. Let's recall that at the peak of World War II, the United States devoted 45 percent of its gross national product to the war effort. By that measure, Mr. Chairman, we could in a supreme crisis marshal an effort to defend our country seven times larger than today. This is an important conflict to keep in mind here.

So, the potential for expanding our military strength in wartime or a crisis is critical for our long-term deterrence strategy. Now, equally critical of course is readiness in peacetime to respond effectively to a sudden attack.

Which one of these factors is more important? Both cost money; we have to choose. The existing forces are important and the mobilization potential of our industries is important; and we have to strike a balance here. I admit that since the 1960's, we may have gone too far in neglecting our national capability for a military mobilization. We have tried during the last 5 years to take a range of initiatives to improve this mobilization capability.

We have explored various approaches. For example, producing long lead items of complicated weapon systems in advance and on multiyear contracts so that we could quickly surge the production of these weapons. Another approach that we emphasized that helps mobilization—industrial mobilization—potential is dual sourcing. By maintaining contracts for more than one supplier for a given weapon system, we not only have competition, but we enlarge the potential manufacturing capacity in the event of a mobilization surge.

And we are looking for other ways in our weapons procurement to enhance this surge potential. In addition, we are making preparations to expedite the budgeting process for the event of a mobilization emergency. So, the Department of Defense is developing an emergency procurement budget—in essence, a plan for the kind of defense budget that Congress would want to have submitted in a national emergency.

You may recall in 1950, Congress decided to appropriate a threefold increase in the defense budget, but it took the Pentagon about 1 year to get these additional funds into the procurement process. We want to cut that time delay. We have to exercise the utilization of such a emergency procurement budget so that it could be rapidly translated into procurement contracts and early deliveries.

The purposes of industrial mobilization and the opportunities for our national security to benefit from industrial mobilization depend heavily on the circumstances of the particular emergency. Let us recall, even the best capability for industrial mobilization could not help us in the event of a sudden, massive, surprise attack. To deter such an attack, we need ready forces.

But in the event of a prolonged crisis or a limited war, the rapid buildup of our defensive strength could make a major contribution to ending that war and restoring the peace. And preparing for industrial mobilization is most relevant—let us be clear on that—for a mobilization period of 1 to 3 years. If you have only 5 hours to prepare for the decisive battle, our dependence on machine tool imports, on oil imports, on other imports will not matter.

Conversely, if you should have 5 years of peacetime mobilization, advance preparation would also not be so critical. It is for the contingencies in between—1 to 3 years—that we need this mobilization potential at home.

Now, since we must be prepared to deal with such a wide range of potential emergencies, we need a flexible approach. Even for a 1- to 3-years mobilization period, we should not take it for granted that we would be cut off from all imports. I am sorry that I cannot answer Senator Long's question here, who was puzzled about this point; but you can imagine many periods of mobilization during a limited war—in Southwest Asia or some other theater where we would be engaged—period of crisis when Congress would want to have the defense capability increased but when most of our imports are not actually impeded.

So, it is not self-evident that all our import dependencies would interfere with our mobilization effort. Also, during a mobilization period, other avenues are opened or would be opened to the Defense Department to increase production and to cope with scarce resources. For example, the import dependence on platinum was mentioned this morning by some witnesses; but in an emergency, given the right period of time of 1, 2, or 3 years when we could mobilize, we could recall that over 30 percent of the platinum consumption is being used for automobiles, particularly catalytic converters. We could suspend temporarily the requirement for catalytic converters; and in a pinch, we could even recycle existing converters to regain the platinum.

I do not want to elaborate on these methods to cope with emergencies, only to indicate the broad range of contingencies that we have to face.

The **Chairman**. Mr. Secretary, I am going to have to ask you to summarize.

Dr. **Ikle**. I am just about to do that, Mr. Chairman.

The **Chairman**. Good.

Dr. **Ikle**. Mr. Chairman, my point is twofold: that we must strike a balance between the efficiencies of peacetime defense production and the risks of foreign dependence in wartime; but the Defense Department very much wants to emphasize and recognize the importance of improving our industrial mobilization capacity. Thank you, Mr. Chairman.

The **Chairman**. Thank you, sir. The reason I wanted you to summarize is that I would like to get to Secretary Brown after the two of you are done; and we are going to vote again in about 15 to 20 minutes. And I would like to finish with the Secretary before we have to break.

Dr. Freedenberg, go right ahead.

[The prepared written statement of Dr. Ikle follows:]

STATEMENT OF

DR. FRED C. IKLE

UNDER SECRETARY OF DEFENSE FOR POLICY

BEFORE THE COMMITTEE ON FINANCE

THE UNITED STATES SENATE

AUGUST 13, 1986

INDUSTRIAL MOBILIZATION FOR NATIONAL SECURITY

Thank you, Mr. Chairman, for the opportunity to appear before you today to discuss the importance of assuring an adequate industrial mobilization base in support of national security. I realize that the purpose of today's hearing is to discuss amendments to Section 232 of the Trade Expansion Act of 1962. However, I would like to focus my remarks on the broader role of industrial mobilization for national security, so that we can better judge this particular case.

The ability of the United States to mobilize for war is critical for our defense policy. The basic reason why mobilization can help our defense effort is that the economy of the United States is larger, more creative, and technologically more advanced than that of our potential enemy. This disparity is even more in our favor, if one compares with the Soviet bloc not only the US economy, but the total economic strength of the Atlantic Alliance plus Japan. The Soviet Union diverts 15 to 20 percent of its gross national product to its military establishment, we spend some 6 percent on defense, and our Allies even less. But at the peak in World War II, the United States devoted 45 percent of its gross national product to the war effort. By that measure, Mr. Chairman, we could, in a supreme crisis, marshall an effort to defend our country seven times larger than today. This is an important concept to keep in mind.

This potential for expanding our military strength in wartime or a crisis is critical to our long-term deterrence strategy. Equally critical, of course, is military readiness in peacetime, to respond effectively to sudden attack.

Which one of these two factors is more important: existing forces, or the mobilization potential of defense industry? We must try to find the proper balance. Since the 1960s, we had gone to far in neglecting our national capability for military mobilization. However, during the last five years, the Defense Department has taken a range of initiatives that help to strengthen our capabilities for mobilization. Yet even today, only a small fraction of the defense budget is devoted to our mobilization base, somewhere between 1 to 3 percent, depending on what expenditures are included.

We have explored various approaches to improve our ability quickly to surge defense production in an emergency. One approach that the Defense Department developed is to buy long-lead items in advance for systems with multi-year contracts. From Fiscal Year 1984 through 1988, DoD has allocated a $100 million annual funding wedge for such surge programs. The first production surge program, the TOW-2 missile, was funded by Congress with $16.2 million in Fiscal Year 1985. The FY 1986 surge program has included three projects totalling $50.5 milion. Our proposed FY 1987 program contains seven projects totalling $88.6 million. These programs can offer cost-effective improvements in our capability to surge production in an emergency.

A more generally applicable approach to improve our capacity for industrial mobilization is dual sourcing. By maintaining contracts with more than one supplier for a given weapon system, we not only enhance competition but we enlarge the potential manufacturing capacity for the event of a crisis. In its weapons procurement, the Defense Department will now give increasing emphasis to approaches that will improve surge capacity.

In addition, we are making preparations to expedite the budgeting process for the event of a mobilization emergency. The Department is developing an Emergency Procurement Budget--which in essence is a plan for the kind of defense budget Congress would want to have submitted in a national emergency. In 1950, you may recall, Congress decided to appropriate a three-fold increase in the Defense budget. It took the Pentagon at least a year to translate this Congressional mandate for a 200 percent increase in defense spending into completed procurement actions.

The Emergency Procurement Budget could reduce this time lag. It could, for example, form the basis for a quick supplemental appropriation request. We will have to keep this

Emergency Procurement Budget up-to-date and organize mobilization exercises to see how such a budget could be rapidly translated into contracts and early deliveries. That is to say, by preparing an Emergency Procurement Budget in peacetime and by exercising how it would be used in a crisis, we can learn about the critical problems associated with surging defense production in a period of industrial mobilization.

The purposes and opportunities for industrial mobilization obviously depend heavily on the circumstances of the emergency. Even the best capability for industrial mobilization could not help us in the event of a sudden, massive surprise attack. To deter such an attack we have to rely on ready forces. But in the event of a prolonged crisis or a limited war, a rapid build-up of our defensive strength could make a major contribution to restoring the peace. Preparing for industrial mobilization is most relevant for a mobilization period of one to three years. If we have only five hours to prepare for the decisive battle, our dependence on machine tool imports, or any other imports, will not matter. Conversely, if we should have five years for peacetime mobilization, advance preparation would also not be critical. It is for contingencies in between that we must worry about an inadequate industrial mobilization base at home.

Since we must be prepared to deal with such a wide range of potential emergencies, we need a flexible policy for industrial mobilization. Even for a one to three year mobilization period, we should not take it for granted that we would be cut off from all imports. For example, during the mobilization period in 1951/52, none of our imports were impeded.

Moreover, once a consensus prevails in Congress and the Executive Branch that our nation faces a defense emergency, several avenues are opened up to meet industrial requirements that are not available in normal peacetime. We could, for example, substitute lower quality materials in consumer goods to conserve higher performance materials and components in support of defense production. Over thirty percent of platinum consumption in the United States is used for automobiles, primarily in catalytic converters. Not only could we suspend the requirement for catalytic converters, but in a pinch, we could recycle existing converters to regain the platinum.

The Defense Department can also adjust the specifications for weapons systems to facilitate defense production in an emergency. For example, the requirement for long shelf life can be dropped in time of crisis.

Thus, it is by no means self-evident that every kind of dependence on imports would impair our mobilization capacity. The more our allies and friends could help in building the arsenal for the common defense, the better. Also, we cannot disregard savings in peacetime. Cooperation in defense production with our allies can result in greater efficiencies. And our defense contractors can deliver the things that the Defense Department needs in peacetime at lower cost if they are permitted to take advantage of the efficiencies of international trade and off-shore production.

In sum, Mr. Chairman, we must not only strike a balance between efficiencies of peacetime defense procurement and the risks of foreign dependence in wartime, but we must also prepare for a wide range of mobilization contingencies, stretching from the possibility of sudden massive attack where we would depend entirely on existing forces, to an industrial mobilization period usefully extending over several years. Section 232 of the Trade Act of 1962 wisely allows the President discretion to consider all the important factors.

Let me conclude by reemphasizing that the Defense Department certainly recognizes the importance of improving our capacity for industrial mobilization. And we are anxious to contribute to the technological leadership and industrial strength of the United States. Whether it is for computers, electronics components, or machine tools, the Defense Department seeks to encourage an efficient, competitive, and modern industrial base located within the borders of our country.

STATEMENT OF PAUL FREEDENBERG, PH.D., ASSISTANT SECRETARY FOR TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE, WASHINGTON, DC

Dr. **Freedenberg**. Mr. Chairman and members of the committee, I am pleased to appear before you today to present the Commerce Department's and the administration's views of the Trade Enhancement Act bill as it concerns section 232 of the Trade Expansion Act of 1962. I would like to submit my full testimony for the record and summarize my main points for you today so we will have more time available for the question and answer period.

The **Chairman**. Without objection.

Dr. **Freedenberg**. Section 232 represents a classic exception to the policies of liberal trade. This so-called national security exception, when carefully confined, provides the justification for the use of trade controls on imports, despite the economic costs which may be imposed by the use of such controls. The economic goals of a free market must yield to the requirements of national survival when the President believes that the defense or security of the United States depend upon industries impacted by excessive imports.

The purpose of section 232 is quite clearly not to give protection per se to domestic industries. Section 232 makes the impact of imports on individual industries relevant, but only to the ultimate determination of whether such weakening of our internal economy may impair the national security. This distinction was made clear in the report of the House Committee on Ways and Means on the 1958 Act, which was a predecessor statute to section 232.

Under section 232 of the Trade Expansion Act of 1962, as amended, the Secretary of Commerce, in consultation with the Secretary of Defense and the heads of other appropriate agencies, has the responsibility to conduct an investigation to determine the effects of imports of any article on the national security. This function was transferred to the Secretary of Commerce from the Secretary of the Treasury effective January 2, 1980.

I will not go through the investigation process, with which you are quite familiar. However, I would like to note that, in addition to the quantitative approach to national security analysis, which is undertaken in any section 232 study, the investigation methodology may also use a qualitative analysis of rising import penetration levels and their effects on the technological base of U.S. industry.

A national security investigation cannot merely count up the number of items necessary to fight a war as a static snapshot of the U.S. industrial capability. It must also evaluate the longer term technological ability of that industry to keep up with developments and to remain sufficiently competitive to meet national security needs. In addition, it must also look at how other industries that depend on that particular industry would be affected by positive findings.

If the results of our quantitative and qualitative evaluation of any industry indicate a determination that imports are threatening natinal security, the investigation results in a positive finding, and the Secretary recommends appropriate action to eliminate the threat.

Since you are in a hurry, I will move to the major provisions of the Trade Bill which is before you. There are three major proposed revisions: one, to impose a 90-day limit for a Presidential determination after the Secretary of Commerce submits the investigation report; two, to codify certain factors for consideration during the investigation, such as the long-term dependence of the United States on imports of the products under investigation and the extinguishment of a viable domestic industry producing articles for national security; and three, the grandfather clause.

The administration opposes any attempt to limit the President's discretion. The Presidential review of a section 232 study involves the balancing of many diverse and sometimes competing national interest factors. These complex factors range from forecasts of defense and civilian requirements during a national crisis to foreign relations with key allies and trading partners. Imposing a time limit on the President would constrain his flexibility to adjust the timing and substance of his decision in response to national security considerations.

We do not believe that the Congress ever intended to tie the President's hands when it passed the Trade Agreements Extension Act of 1955 or its successor statutes.

With respect to codifying additional factors for consideration in a 232 investigation, I have indicated that we currently examine long-term dependence issues and the viability of U.S. industry in our investigation methodology. It would be unnecessary to pass legislation codifying factors which we already consider in our 232 investigations.

And finally, the grandfather proposal, as I understand it, would only apply to the machine tool industry for which we are currently seeking voluntarily restraint agreements with our major foreign suppliers. To grandfather in a 90-day time limit for final Presidential determination would undermine the current effort to provide import relief for the machine tool industry.

I appreciate the opportunity to appear before this committee and to testify on this important issue, and I am willing to answer any questions.

The CHAIRMAN. Dr. Freedenberg, thank you. Senator Bentsen.

[The prepared written statement of Dr. Freedenberg follows:]

S. 1860 TRADE ENHANCEMENT ACT BILL
TITLE X. NATIONAL SECURITY
SECTION 1002
ACTIONS AGAINST IMPORTS
THREATENING NATIONAL SECURITY

TESTIMONY OF
PAUL FREEDENBERG
ASSISTANT SECRETARY
FOR
TRADE ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE SENATE FINANCE COMMITTEE

AUGUST 7, 1986

S. 1860 TRADE ENHANCEMENT ACT BILL
TITLE X - NATIONAL SECURITY
SECTION 1002
ACTIONS AGAINST IMPORTS THREATENING NATIONAL SECURITY

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM PLEASED TO APPEAR BEFORE YOU TODAY TO PRESENT THE COMMERCE DEPARTMENT'S AND THE ADMINISTRATION'S VIEWS ON THE TRADE ENHANCEMENT ACT BILL (S. 1860), AS IT CONCERNS SECTION 232 OF THE TRADE EXPANSION ACT OF 1962.

I WOULD LIKE TO BEGIN BY PRESENTING AN OVERVIEW OF SECTION 232 INVESTIGATIONS, INCLUDING: 1) THE HISTORY OF THE SECTION 232 STATUTE, 2) THE PURPOSE OF NATIONAL SECURITY INVESTIGATIONS, 3) THE LEGAL AUTHORITY TO DATE, 4) THE CRITICAL FACTORS AND METHODOLOGY FOR CONDUCTING A SECTION 232 INVESTIGATION, 5) A BRIEF SUMMARY OF INVESTIGATIONS CONDUCTED UNDER THE STATUTE, AND 6) THE ADMINISTRATION'S POSITION ON THE PROPOSED BILL.

THE BROAD APPLICATION AND THE CLOSE RELATIONSHIP OF NATIONAL SECURITY TO TRADE POLICY HAS ALWAYS BEEN AN IMPORTANT ISSUE AND IS BASIC TO THE TRADE EXPANSION ACT OF 1962 AND ITS PREDECESSOR STATUTES. THE PROVISION THAT "THE PRESIDENT SHALL TAKE SUCH ACTION, AND FOR SUCH TIME, AS HE DEEMS NECESSARY TO ADJUST THE IMPORTS OF SUCH ARTICLE AND ITS DERIVATIVES, SO THAT IMPORTS WILL NOT THREATEN

TO IMPAIR THE NATIONAL SECURITY" HAS BEEN PART OF DOMESTIC LAW SINCE THE ENACTMENT OF THE TRADE AGREEMENTS EXTENSION ACT OF 1955. THIS LANGUAGE HAS BEEN RE-ENACTED, WITH SLIGHT MODIFICATION, IN THE TRADE AGREEMENTS EXTENSION ACT OF 1958, THE TRADE EXPANSION ACT OF 1962 AND THE TRADE ACT OF 1974.

SECTION 232 REPRESENTS A CLASSIC EXEMPTION TO THE POLICIES OF LIBERAL TRADE. THIS SO CALLED "NATIONAL SECURITY" EXEMPTION, WHEN CAREFULLY CONFINED, PROVIDES THE JUSTIFICATION FOR USE OF TRADE CONTROLS ON IMPORTS, DESPITE THE ECONOMIC COSTS WHICH MAY BE IMPOSED BY THE USE OF SUCH CONTROLS. THE ECONOMIC GOALS OF A FREE MARKET MUST YIELD TO THE REQUIREMENTS OF NATIONAL SURVIVAL WHEN THE PRESIDENT BELIEVES THAT THE DEFENSE OR SECURITY OF THE U.S. DEPEND UPON INDUSTRIES IMPACTED BY EXCESSIVE IMPORTS.

EXPLAINING THE "NATIONAL SECURITY" EXCEPTION PROVISION TO THE HOUSE OF REPRESENTATIVES DURING DEBATE ON THE 1955 ACT, REPRESENTATIVE JERE COOPER, CHAIRMAN OF THE HOUSE WAYS AND MEANS COMMITTEE, STATED:

> "THE PRESIDENT WOULD, AS HE INDEED MUST UNDER THE CONSTITUTION, CONSIDER OUR TOTAL NATIONAL SECURITY IN ALL ITS ASPECTS AND MAKE HIS DETERMINATION ON THE BASIS OF ALL THE FACTORS BEARING ON OUR NATIONAL SECURITY. IN ARRIVING AT HIS DECISION HE MUST CONSIDER THE IMPACT OF THAT DECISION ON OUR TOTAL FOREIGN POLICY, AND ON THE ECONOMIES OF THE NATIONS OF THE FREE WORLD THAT ARE ALLIED WITH US..."

THE CHAIRMAN ALSO EXPLAINED THAT THE NATIONAL SECURITY CLAUSE WAS "NOT INTENDED TO, AND DOES NOT DIMINISH OR IMPAIR ANY AUTHORITY THE PRESIDENT MAY HAVE UNDER OTHER LAW...CONVERSELY, ACTION UNDER THE NEW PROVISION MAY BE TAKEN WHOLLY ASIDE FROM THE AUTHORITY CONTAINED IN ANY OTHER LAW. ...THE PRESIDENT WOULD NOT ONLY RETAIN FLEXIBILITY AS TO THE PARTICULAR MEASURE WHICH HE DEEMS APPROPRIATE TO TAKE, BUT, HAVING TAKEN AN ACTION, HE WOULD RETAIN FLEXIBILITY WITH RESPECT TO THE CONTINUATION, MODIFICATION, OR SUSPENSION OF ANY DECISION THAT HAD BEEN MADE." ACCORDINGLY, IT WAS "CLEAR THAT THE PRESIDENT'S DECISION MUST BE BASED ON WHETHER OR NOT IMPORTS ON NET BALANCE THREATEN TO IMPAIR OUR NATIONAL SECURITY AND ON HIS DECISION AS TO THE APPROPRIATE MEASURE TO BE TAKEN THAT WOULD BEST SERVE THE TOTAL SECURITY INTERESTS OF THE UNITED STATES."

DURING SENATE CONSIDERATION OF THE 1958 ACT, SENATOR BYRD STATED IN THE REPORT TO THE SENATE COMMITTEE ON FINANCE THAT THE PURPOSE OF THE PROPOSED AMENDMENTS TO THE NATIONAL SECURITY PROVISIONS OF THE 1955 ACT IS TO GIVE THE PRESIDENT UNQUESTIONED AUTHORITY TO LIMIT IMPORTS WHICH THREATEN TO IMPAIR DEFENSE ESSENTIAL INDUSTRIES. THESE AMENDMENTS WOULD DIRECT THE PRESIDENT TO RECOGNIZE THE CLOSE RELATIONSHIP OF THE COUNTRY'S NATIONAL SECURITY TO ITS INTERNAL ECONOMIC WELFARE AND WOULD BROADEN HIS AUTHORITY TO ACT "WHENEVER DANGER TO OUR NATIONAL SECURITY RESULTS FROM A WEAKENING OF SEGMENTS OF THE ECONOMY THROUGH INJURY TO ANY INDUSTRY...."

THE PURPOSE OF SECTION 232 IS QUITE CLEARLY NOT TO GIVE PROTECTION *PER SE* TO DOMESTIC INDUSTRY. SECTION 232 MAKES THE IMPACT OF IMPORTS ON INDIVIDUAL INDUSTRIES RELEVANT, BUT ONLY TO THE ULTIMATE DETERMINATION OF "WHETHER SUCH WEAKENING OF OUR INTERNAL ECONOMY MAY IMPAIR THE NATIONAL SECURITY." THIS DISTINCTION WAS MADE CLEAR IN THE REPORT TO THE HOUSE COMMITTEE ON WAYS AND MEANS ON THE 1958 ACT:

> "YOUR COMMITTEE WAS GUIDED BY THE VIEW THAT THE NATIONAL SECURITY AMENDMENT IS NOT AN ALTERNATIVE TO THE MEANS AFFORDED BY THE ESCAPE CLAUSE FOR PROVIDING INDUSTRIES WHICH BELIEVE THEMSELVES INJURED A SECOND COURT IN WHICH TO SEEK RELIEF. ITS PURPOSE IS A DIFFERENT ONE - TO PROVIDE THOSE BEST ABLE TO JUDGE NATIONAL SECURITY NEEDS...A WAY OF TAKING WHATEVER ACTION IS NEEDED TO AVOID A THREAT TO THE NATIONAL SECURITY THROUGH IMPORTS. SERIOUS INJURY TO A PARTICULAR INDUSTRY, WHICH IS THE PRINCIPAL CONSIDERATION IN THE ESCAPE-CLAUSE PROCEDURE, MAY ALSO BE A CONSIDERATION BEARING ON THE NATIONAL SECURITY POSITION IN PARTICULAR CASES, BUT THE AVOIDANCE OR REMEDY OF INJURY TO INDUSTRIES IS NOT THE OBJECT *PER SE*."

THE OBJECTIVE OF A SECTION 232 INVESTIGATION IS TO DETERMINE THE EFFECTS OF IMPORTS OF ANY ARTICLE, GOOD OR COMMODITY ON THE NATIONAL SECURITY. AN INVESTIGATION INCLUDES AN EXAMINATION OF THE EFFECTS OF IMPORTS ON ALL PHASES OF U.S. PRODUCTIVE CAPACITY NECESSARY TO MEET A SELECTED EMERGENCY SCENARIO OVER A SPECIFIED DURATION, AS

WELL AS EXAMINATION OF OTHER FACTORS RELATED TO NATIONAL SECURITY. INVESTIGATIONS ARE CONDUCTED BY THE DEPARTMENT OF COMMERCE AND THE STATUTE PROVIDES UP TO ONE YEAR FOR THE STUDY TO BE COMPLETED AND SUBMITTED TO THE PRESIDENT.

UNDER SECTION 232 OF THE TRADE EXPANSION ACT OF 1962, AS AMENDED (19 USC 1862) THE SECRETARY OF COMMERCE, IN CONSULTATION WITH THE SECRETARIES OF DEFENSE AND THE HEADS OF OTHER APPROPRIATE AGENCIES, HAS THE RESPONSIBILITY TO CONDUCT AN INVESTIGATION TO DETERMINE THE EFFECTS OF IMPORTS OF ANY ARTICLE ON THE NATIONAL SECURITY. THIS FUNCTION WAS TRANSFERRED TO THE SECRETARY OF COMMERCE FROM THE SECRETARY OF TREASURY EFFECTIVE JANUARY 2, 1980.

THE REQUEST FOR AN INVESTIGATION CAN BE MADE BY THE HEAD OF ANY DEPARTMENT OR AGENCY OR BY AN INTERESTED PARTY (INCLUDING DOMESTIC INDUSTRY). THE SECRETARY OF COMMERCE ALSO HAS THE AUTHORITY TO SELF-INITIATE AN INVESTIGATION UNDER SECTION 232. THE APPLICATION GUIDELINES FOR INITIATION OF AN INVESTIGATION AND FOR THE CONDUCT OF AN INVESTIGATION ARE PUBLISHED IN THE COMMERCE DEPARTMENT REGULATIONS FOR SECTION 232 INVESTIGATIONS (15 CFR 359 [1982]).

THE REGULATIONS PROVIDE THE FOLLOWING FACTORS FOR CONSIDERATION IN DETERMINING THE EFFECTS OF IMPORTS ON THE NATIONAL SECURITY:

- REQUIREMENTS FOR DIRECT DEFENSE, INDIRECT DEFENSE, AND ESSENTIAL CIVILIAN SECTORS OF THE NATIONAL ECONOMY;

- DOMESTIC PRODUCTION NEEDED FOR PROJECTED NATIONAL DEFENSE NEEDS;
- CAPACITY OF DOMESTIC INDUSTRIES TO MEET PROJECTED NATIONAL DEFENSE NEEDS;
- EXISTING AND ANTICIPATED AVAILABILITY OF LABOR (SKILLED AND UNSKILLED), RAW MATERIALS, PRODUCTION EQUIPMENT AND FACILITIES, AND OTHER SUPPLIES AND SERVICES ESSENTIAL TO THE NATIONAL DEFENSE;
- GROWTH REQUIREMENTS OF DOMESTIC INDUSTRIES TO MEET NATIONAL DEFENSE REQUIREMENTS;
- QUANTITY, QUALITY AND AVAILABILITY OF IMPORTS;
- IMPACT OF FOREIGN COMPETITION ON THE ECONOMIC WELFARE OF THE ESSENTIAL DOMESTIC INDUSTRY;
- SERIOUS EFFECTS OF IMPORTS RESULTING IN THE POSSIBLE DISPLACEMENT OF DOMESTIC PRODUCTS, UNEMPLOYMENT, DECREASE IN REVENUES TO THE GOVERNMENT, LOSS OF INVESTMENTS, LOSS OF SPECIALIZED SKILLS AND LOSS OF PRODUCTIVE CAPACITY; AND
- ANY OTHER FACTORS WHICH ARE RELEVANT TO NATIONAL SECURITY DUE TO UNIQUE CIRCUMSTANCES ASSOCIATED WITH EACH CASE.

A METHODOLOGY FOR CONDUCTING THE INVESTIGATION INVOLVES ASSESSING THE SIGNIFICANCE OF THESE CRITICAL FACTORS AS THEY RELATE BOTH TO ANTICIPATED DEMAND FOR THE PRODUCT DURING A GLOBAL CONFLICT AND TO THE AVAILABLE SUPPLY FROM BOTH DOMESTIC AND RELIABLE FOREIGN SOURCES. IF IT IS DETERMINED THAT THE TOTAL AVAILABLE SUPPLY IS INSUFFICIENT TO MEET DEMAND AND THAT THE NATIONAL SECURITY IS THREATENED BY SUCH A SHORTFALL, THE REASONS FOR THE SHORTFALL ARE EVALUATED TO DETERMINE WHETHER IMPORTS ARE THREATENING THE NATIONAL SECURITY.

IN ADDITION TO THIS QUANTITATIVE APPROACH TO NATIONAL SECURITY ANALYSIS, THE INVESTIGATION METHODOLOGY MAY USE A QUALITATIVE ANALYSIS OF RISING IMPORT PENETRATION LEVELS AND THEIR EFFECTS ON THE TECHNOLOGICAL BASE OF THE U.S. INDUSTRY. A NATIONAL SECURITY INVESTIGATION CANNOT MERELY COUNT UP THE NUMBER OF ITEMS NECESSARY TO FIGHT A WAR AS A STATIC SNAP-SHOT OF U.S. INDUSTRIAL CAPABILITY, IT MUST ALSO EVALUATE THE LONGER-TERM TECHNOLOGICAL ABILITY OF THAT INDUSTRY TO KEEP UP WITH DEVELOPMENTS AND REMAIN COMPETITIVE.

U.S. TECHNOLOGICAL COMPETITIVENESS IS THE FOUNDATION OF OUR NATIONAL SECURITY EDGE, AND TECHNOLOGICAL DEVELOPMENT IN KEY INDUSTRIES HAVE SPIN-OFF APPLICATIONS FOR A WIDE VARIETY OF DEFENSE CRITICAL SECTORS. WE NEED TO EVALUATE THE ABILITY OF AN INDUSTRY TO SUPPLY DEFENSE NEEDS NOW AS WELL AS IN THE FUTURE. THIS TYPE OF QUALITATIVE ANALYSIS IS AS IMPORTANT AS THE QUANTITATIVE APPROACH TO DETERMINE NUMERICAL REQUIREMENTS FOR AN EMERGENCY SCENARIO.

IF THE RESULTS OF OUR QUANTITATIVE AND QUALITATIVE EVALUATION OF AN INDUSTRY INDICATE A DETERMINATION THAT IMPORTS ARE THREATENING NATIONAL SECURITY, THE INVESTIGATION RESULTS IN A POSITIVE FINDING AND THE SECRETARY RECOMMENDS APPROPRIATE ACTION TO ELIMINATE THE THREAT. IF THE ANALYSIS INDICATES THAT IMPORTS ARE NOT THREATENING THE NATIONAL SECURITY, THE INVESTIGATION RESULTS IN A NEGATIVE FINDING AND THE SECRETARY RECOMMENDS NO ACTION.

AFTER THE INVESTIGATION REPORT IS COMPLETED, THE SECRETARY SUBMITS THE REPORT TO THE PRESIDENT FOR HIS DECISION. THE PRESIDENT CONSIDERS THE FINDINGS AND RECOMMENDATIONS IN LIGHT OF THE UNIVERSE OF NATIONAL SECURITY ISSUES CONCERNING THE U.S. AND MAKES HIS FINAL DETERMINATION AT THE APPROPRIATE TIME. AS I HAVE NOTED, THE DEPARTMENT OF COMMERCE HAS ONE YEAR TO COMPLETE ITS INVESTIGATION AFTER INITIATION OF A PETITION AND TO SUBMIT THE REPORT TO THE WHITE HOUSE. HOWEVER, THE PRESIDENT DOES NOT HAVE A TIME LIMIT ON HIS DECISION. THE REASONS FOR RETAINING PRESIDENTIAL FLEXIBILITY IN TIMING HIS FINAL DECISION, AS I HAVE EXPLAINED IN THE LEGISLATIVE HISTORY, INVOLVE THE NUMEROUS NATIONAL SECURITY INTERESTS WHICH MUST BE CONSIDERED BY THE PRESIDENT.

THERE HAVE BEEN FIVE SECTION 232 INVESTIGATIONS SINCE THE DEPARTMENT OF COMMERCE RECEIVED AUTHORITY TO ADMINISTER THE STATUTE:
1) GLASS-LINED CHEMICAL PROCESSING EQUIPMENT COMPLETED MARCH, 1982, WITH A NEGATIVE DETERMINATION, 2) CRUDE OIL FROM LIBYA, COMPLETED IN MARCH, 1982, WITH A POSITIVE DETERMINATION THAT RESULTED IN A

PRESIDENTIAL FINDING FOR AN EMBARGO ON CRUDE OIL FROM LIBYA, 3) INDUSTRIAL FASTNERS COMPLETED FEBRUARY, 1983, WITH A NEGATIVE DETERMINATION, 4) FERROALLOYS COMPLETED MAY, 1984, WITH A NEGATIVE DETERMINATION (IN LIGHT OF THE ACTION TAKEN TO REMOVE SOME PRODUCTS FROM GSP AND THE INITIATION OF A FERROALLOY UPGRADING PROGRAM UNDER THE NATIONAL DEFENSE STOCKPILE), AND 5) MACHINE TOOLS, COMPLETED MAY, 1986, WITH A DEFERRED DETERMINATION AND A PRESIDENTIAL MANDATE TO NEGOTIATE VOLUNTARY RESTRAINT AGREEMENTS (VRA) AND TO IMPLEMENT DOMESTIC INITIATIVES TO HELP THE MACHINE TOOL INDUSTRY.

SOME OF YOU MAY BE WONDERING WHETHER THERE ARE CERTAIN TYPES OF PRODUCTS WHICH ARE APPROPRIATE SUBJECTS FOR SECTION 232 INVESTIGATIONS. AS YOU CAN SEE BY THE LIST OF INVESTIGATIONS CONDUCTED BY COMMERCE, RAW MATERIALS, CHEMICALS, MANUFACTURED GOODS AND HEAVY CAPITAL EQUIPMENT HAVE ALL BEEN APPROPRIATE PRODUCTS FOR SECTION 232 INVESTIGATIONS. YOU SHOULD ALSO NOTE THAT THE LEVEL OF TECHNOLOGY FOR PRODUCTS SUBJECT TO 232 INVESTIGATIONS HAS BEEN INCREASING OVER THE YEARS. THIS PARALLELS THE INCREASINGLY HIGH-TECH QUALITY OF THE U.S. ECONOMY IN GENERAL. ACCORDINGLY, I BELIEVE THAT TECHNOLOGICALLY-SOPHISTICATED INDUSTRIES WILL MOST LIKELY BE THE SUBJECT OF ANY FUTURE SECTION 232 INVESTIGATIONS.

LET ME NOW BRIEFLY OUTLINE THE DETAILS OF THE MACHINE TOOL DECISION, WHICH IS THE MOST RECENT SECTION 232 CASE AND POSSIBLY THE MOST IMPORTANT INVESTIGATION CONDUCTED UNDER THE STATUTE.

THE PRESIDENT DECIDED TO SEEK UP TO A 5-YEAR PROGRAM OF VRAs WITH WEST GERMANY, JAPAN, SWITZERLAND, AND TAIWAN ON CERTAIN KEY CATEGORIES OF MACHINE TOOLS, INCLUDING THE FOLLOWING: MACHINING CENTERS, NUMERICALLY-CONTROLLED (NC) LATHES, NON-NC LATHES, NC AND NON-NC PUNCHING AND SHEARING MACHINES AND MILLING MACHINES. WE ARE PLANNING TO MEET WITH OUR ALLIES AND TRADING PARTNERS SHORTLY AND NEGOTIATE VRAS.

THE OBJECTIVE IN SEEKING VRAs AND IN IMPLEMENTING DOMESTIC PROGRAMS IS TO PROVIDE U.S. INDUSTRY WITH RELIEF FROM IMPORTS TO ALLOW IT TO MAINTAIN ITS COMPETITIVENESS. IT IS IMPORTANT TO NOTE THAT THESE ACTIONS ARE NECESSARY FOR THE NATIONAL SECURITY - THIS IS NOT A TRADE CASE AND WE ARE NOT SEEKING RELIEF FROM UNFAIR TRADE PRACTICES.

IN ADDITION TO THE VRAS, THE PRESIDENT HAS CALLED FOR A PROGRAM TO FACILITATE MODERNIZATION OF THE DOMESTIC MACHINE TOOL INDUSTRY.

THE DOMESTIC INITIATIVES DEVELOPED FOR THE MACHINE TOOL INDUSTRY INCLUDE THE FOLLOWING:

- THE DEPARTMENTS OF COMMERCE AND DEFENSE WILL DEVELOP AN ACTION PLAN TO HELP INTEGRATE U.S. MACHINE TOOL COMPANIES MORE FULLY INTO THE DEFENSE PROCUREMENT PROCESS AND HELP THE INDUSTRY IMPROVE MANUFACTURING PRODUCTIVITY. (FOR EXAMPLE, THE GOVERNMENT WILL PROVIDE UP TO 5 MILLION DOLLARS PER YEAR FOR THE NEXT THREE YEARS IN MATCHING FUNDS TO HELP SUPPORT A

PRIVATE SECTOR TECHNOLOGY CENTER TO HELP THE INDUSTRY MAKE ADVANCES IN MANUFACTURING TECHNOLOGY AND DESIGN.)

- THE ATTORNEY GENERAL AND OTHER AGENCIES WILL INVESTIGATE THE POTENTIAL FOR COOPERATIVE R&D EFFORTS ON THE PART OF THE INDUSTRY.

YOU SHOULD NOTE THAT THE VRAS AND DOMESTIC INITIATIVES WERE WELCOMED BY THE U.S. MACHINE TOOL INDUSTRY AND HAVE ITS ENDORSEMENT.

IN LIGHT OF THE OVERVIEW I'VE PRESENTED OF SECTION 232 AND THE RECENT CASE PRECIDENTS, I WOULD LIKE TO EVALUATE THE PROPOSED CHANGES TO THE STATUTE CONTAINED IN THE TRADE ENHANCEMENT ACT BILL (S. 1860).

THERE ARE THREE MAJOR PROPOSED REVISIONS: 1) TO IMPOSE A 90-DAY LIMIT FOR A PRESIDENTIAL DETERMINATION AFTER THE SECRETARY OF COMMERCE SUBMITS THE INVESTIGATION REPORT, 2) TO CODIFY FACTORS FOR CONSIDERATION DURING AN INVESTIGATION - THE LONG-TERM DEPENDENCE OF THE U.S. ON IMPORTS OF THE PRODUCT UNDER INVESTIGATION AND THE EXTINGUISHMENT OF A VIABLE DOMESTIC INDUSTRY PRODUCING ARTICLES FOR NATIONAL SECURITY, AND 3) TO "GRANDFATHER" IN THE PROPOSED PROVISIONS TO APPLY TO ANY REPORT ISSUED BY THE SECRETARY OF COMMERCE UNDER SECTION 232 IN LESS THAN 90 DAYS PRIOR TO THE DATE OF ENACTMENT.

THE ADMINISTRATION OPPOSES ANY ATTEMPT TO LIMIT THE PRESIDENT'S DISCRETION. THE PRESIDENTIAL REVIEW OF A SECTION 232 STUDY INVOLVES THE BALANCING OF MANY DIVERSE AND SOMETIMES COMPETING NATIONAL INTEREST FACTORS. AS I HAVE STATED EARLIER IN MY TESTIMONY, THESE COMPLEX FACTORS RANGE FROM FORECASTS OF DEFENSE AND CIVILIAN REQUIREMENTS DURING A NATIONAL CRISIS TO FOREIGN RELATIONS WITH KEY ALLIES AND TRADING PARTNERS. IMPOSING A TIME LIMIT ON THE PRESIDENT CONSTRAINS HIS FLEXIBILITY TO ADJUST THE TIMING AND SUBSTANCE OF HIS DECISION IN RESPONSE TO NATIONAL SECURITY CONSIDERATIONS.

AS THE LEGISLATIVE HISTORY INDICATES, CONGRESS NEVER INTENDED TO TIE THE PRESIDENT'S HANDS WHEN IT PASSED THE TRADE AGREEMENTS EXTENSION ACT OF 1955 AND ITS SUCCESSOR STATUTES. QUITE THE OPPOSITE - IT INTENDED TO GIVE THE PRESIDENT MAXIMUM FLEXIBILITY TO WEIGH COMPETING NATIONAL SECURITY INTERESTS. TO IMPOSE A 90-DAY DEADLINE WOULD RUN THE RISK THAT COMPETING NATIONAL SECURITY INTERESTS COULD NOT BE RESOLVED IN TIME AND THAT SOME SECURITY CONCERNS WOULD SUFFER SOLEY DUE TO THE TIMING OF A SECTION 232 DECISION.

WITH RESPECT TO CODIFYING ADDITIONAL FACTORS FOR CONSIDERATION IN A SECTION 232 INVESTIGATION, I HAVE INDICATED THAT WE CURRENTLY EXAMINE LONG-TERM DEPENDENCE ISSUES AND THE VIABILITY OF U.S. INDUSTRY IN OUR INVESTIGATION METHODOLOGY. IT WOULD BE UNNECESSARY TO PASS LEGISLATION CODIFYING FACTORS WHICH WE ALREADY CONSIDER IN OUR 232 INVESTIGATIONS.

FINALLY, THE "GRANDFATHER" PROPOSAL WOULD ONLY APPLY TO THE MACHINE TOOL INVESTIGATION, FOR WHICH WE ARE CURRENTLY SEEKING VRAS WITH THE MAJOR FOREIGN SUPPLIERS OF MACHINE TOOLS. TO "GRANDFATHER" IN A 90-DAY TIME LIMIT FOR A FINAL PRESIDENTIAL DETERMINATION WOULD UNDERMINE THE CURRENT EFFORT TO PROVIDE IMPORT RELIEF FOR THE MACHINE TOOL INDUSTRY.

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE AND TESTIFY ON THIS IMPORTANT ISSUE. I AM WILLING TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Senator **Bentsen**. Thank you very much, Mr. Chairman.

I look at a situation where Mexico and Venezuela topped out in their oil production. The estimates are that Canada probably will next year or the year after. And the year after that, probably the North Sea and Norway.

Last year, Saudi Arabia was our 15th largest supplier of oil. This year it has moved up to No. 2 and soon will move up to No. 1. What that means is a growing dependence on OPEC oil. We are seeing consumption in this country go up by 500,000 barrels, and we are seeing a reduction already of some 200,000 barrels a day production in this country.

That gap is being filled more and more by oil from the Middle East. I read Jim Schlesinger's statement when he appeared before the Senate Energy Committee. Now, he is the only Secretary that I know of who has filled both roles—that of Secretary of Energy and Secretary of Defense—and this is what he said:

> As the great international stabilizing power, the United States is in the unique position, but dependence on insecure sources of energy will constrain our leeway in foreign policy.

Dr. Ikle, do you agree with that assessment?

Dr. **Ikle**. Yes, I agree. That is an important constraint in our policy and also an important requirement in that we have to expend more of our defense resources to try to maintain our influence and, if possible, maintain peace in the Middle East.

Senator **Bentsen**. Dr. Schlesinger then went on to say: "We are now sowing the seeds of the next energy crisis." Do you agree with that statement?

Dr. **Ikle**. I hope we are not. We have a number of measures going on, ranging from the strategic petroleum reserve to tax benefits that the administration supports to preservation measures.

Senator **Bentsen**. On the petroleum reserve, I am delighted to see the administration change its position. There were a number of us who were fighting very hard to try to get that petroleum reserve increased, and we had the opposition of the administration. Now, they have changed that and gone for 750,000 barrels; but I still don't see an energy policy that avoids a situation about a market price that is being fixed in the Middle East. We have no free market system in oil, and I don't see us doing the things that are necessary to see that we have a stable industry in this country and that we continue producing here.

Dr. **Ikle**. Even under the best of circumstances, domestic production could not obviously make up for domestic consumption that is an important contributor and was the most valuable contributor because it is domestic. So, under any situation, we would face an oil import problem.

Senator **Bentsen**. Dr. Ikle, I noticed just the other day—in this morning's newspaper, in fact—that Iraq now has a refueling capacity for its fighter planes far extending their range, going down now into the Straits of Hormuz, hitting two major tankers yesterday. That shows our vulnerability.

I just don't want to be in the situation where we are finally having to send our Armed Forces to the Middle East and building them up there, trying to protect something that is very critical.

And I think the Senator from Louisiana made a very valid point when he said, if we read through your statement, you don't address the question of our dependence on foreign oil and what we should be doing about it.

Dr. IKLE. We have continued an effort which started in the last year or at the end of the Carter administration, stimulated by the events in the Middle East. We have continued that in the first Reagan administration and are continuing it today, to improve the security in the Persian Gulf area, to enable us to come to the assistance of our friends, should they be attacked or threatened; and there is one effort we have going. Even if we could produce all the oil required at home, we would still not want to have these huge reserves on which our allies depend come under hostile control. So, we have an interest in the stability of the Middle East regardless of our domestic needs.

The CHAIRMAN. Senator Roth.

Senator ROTH. Dr. Ikle, under Senator Byrd and my proposal, we formalized the responsibility of the Department of Defense. We would require the Secretary to provide the Secretary of Commerce a defense need assessment within 3 months after the petition is filed. We would also require that the report to the President by the Secretary of Commerce including the recommendations of the Secretary of Defense.

Do you think these are valid considerations? Would you support these recommendations?

Dr. IKLE. The input from the Department of Defense on the national security assessment is absolutely essential because it is the Secretary of Defense who is responsible for this kind of an assessment; but we don't think that a formal legislative arrangement is needed for that. This is the way we are working it today, in that the Defense Department works with the Commerce Department and inputs from the other departments to make these assessments.

Senator ROTH. Let me ask you another question. Section 232 cases have been rare in the past, but the flood of imports threatening segments of industry indicates that there is the possibility that we could lose segments of industries that are important to national security. For this reason, have you instituted any kind of a monitoring service just to help prevent such an occurrence?

Dr. IKLE. We have an effort going—we have had it going for some time—to look overall at the dependence on foreign sources and supplies for our arms production, and that does not just cover raw materials, but also certain parts and pieces—computer chips—the whole range of things.

And that is a matter of concern. I watch that carefully to see that the dependence is not becoming too high. And where it does become too large, affecting weapons systems of vital importance, we try to do something about it.

Senator ROTH. That is all the questions I have, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. Dr. Freedenberg, I have some questions for you; but first of all, I think that you ought to be congratulated because I think you were very responsible for bringing this machine tool 232 petition to conclusion within the Commerce Department. So, I want to recognize that, first of all.

Dr. **Freedenberg**. Thank you.

Senator **Grassley**. But I also have a statement from a person who is going to be on the third panel, Mr. Mack with the machine tool industry; and this is something that he says that, I would like to have you respond. He says:

> Though we were aware that the statute imposed no deadline on the President, we assumed that the urgency of the Secretary's finding would in and of itself assure prompt, though not necessarily favorable, response for resolution of the issue.

And then he says: "We couldn't have been more wrong." He also stated—and here I am paraphrasing it—the delay on the petition made worse the national security threat posed by machine tool imports from 27 percent in 1983 to an estimated 53 percent during the first quarter of 1986.

And so, what I want you to comment on is whether or not that doesn't somewhat negate your premise for not wanting a time limitation place on the President?

Dr. **Freedenberg**. I think that the petition of the machine tool industry was unique in that our initial study was completed just as the revised NSC mobilization study was nearing completion. So, our initial study was sent back for a revision in light of the new mobilization scenario, and that is what caused the delay. I would agree that there is simply no excuse for a 3-year study of an industry and that, in the process you risk some losses. However, I don't think that you would find that particular situation in other 232 cases.

You are not going to have yearly mobilization scenarios made up, and this particular case just had that unusual circumstance. It also had very strong feelings from a number of agencies, and there was a very vigorous debate, as you might expect, since the decision by the President was to seek voluntary restraints in order to avoid a 232 decision. I think, however, that the final result shows that the administration is not adverse to confronting an issue like this and that it can, once it has the mobilization studies in hand, make a decision and make one that is positive.

Senator **Grassley**. Then, hence, from your point of view there is no need for a limitation on the President's decisionmaking?

Dr. **Freedenberg**. I think the administration opposes that sort of——

Senator **Grassley**. Then, let me remind you of the fact that, in 201 cases we have 60 days after receipt of ITC's recommendation for a decision by the President. In the case of 232 cases, we have 90 days—or no, I meant to say that in 301 cases I believe it is similar. And those time limitations don't seem to create much of a problem for the President.

Why in the instances, then, of national security cases, wouldn't it be even more important? And then, also, you already alluded to the fact that you know that there was strong opposition from a lot of other agencies, so you have in this instance things being held up in national security situations by overzealous bureaucrats. It seems to me like that it is more important.

Dr. **Freedenberg**. Having been a congressional staffer, I appreciate the congressional point of view, which is to bring things to a conclusion and to reduce flexibility. I think the feeling is that, if studies can't be completed in a reasonable period, and the President can make a decision, but at times constraining that decision to a particular period might have an effect, for example, on negotiations or on particular other foreign policy decisions that have to be made and would affect those adversely. So, there is a desire not to have that sort of tight restraint.

The CHAIRMAN. Senator Long.

Senator LONG. Dr. Ikle, I can recall in 1973 when the Arabs boycotted us, and we had all the unpleasantness and dislocation that went with that situation. I remember that President Nixon told some of us down in the White House one day that he was going to go all out for what he described as project independence, seeing what the Arab boycott had done to us and to the rest of the free world. He said that after 5 years, those Arabs could drink that oil if they wanted to; we weren't going to be needing it because he was planning to make this Nation independent in oil, seeing what it could do to us.

Now, I recall a situation in Iran. It was back when one single nation, Iran, took their production off the world market—what it did to the rest of the free world and us, such that—in my judgment—it took President Carter out of the White House. The problem was not just the hostages, but the fact was that the kind of thing that the President could have done—the strong movement, use of his military forces—was not available to him. It would have resulted in Iran closing that Persian Gulf, not just for Iranian oil but for all the oil coming out of the Persian Gulf.

So, we didn't have the options available to us we would have had otherwise. Senator Hart many years ago asked to serve on the Armed Services Committee, and he is a thoughtful member of that committee, and fighting for the oil import fee. He closed his argument by saying that his strongest reason for wanting to make this Nation more independent with regard to oil was that he didn't want his son lost in a war trying to continue getting oil out of that area.

Now, I just don't find anything about those considerations in your statement, to tell you the truth. The fact that this energy dependence so upset the British that they were going to go to war in that Suez crisis; they felt that was a matter of life and death, and they didn't appreciate the fact that we didn't see it their way. And it caused us to realize that we would resort to very drastic measures, and nations who have their energy supply cut off to a greater degree than us find themselves even more desperate. I just don't find anything about that in your statement, and I am sort of disappointed that it is not there. What is your thought about that?

Dr. IKLE. The statement is focused on the broader issue of what kind of emergencies we have anticipated in the Defense Department and how to get our arms produced in such an emergency. You focus correctly on another very important and closely related issue of an oil emergency that would affect our civilian economy. It could be in a crisis, but it could be in peacetime, from the U.S. point of view, as was the case in 1973; we were not at war. We have a large array of efforts, some very expensive ones going on.

One I already mentioned before is our effort to maintain a capability and increase the capability to help our friends in the Middle

East, who remain closely allied with us, so we can deny potential adversaries the opportunity to destroy these sources of our oil imports or to take them over. That is why we and previous administration have put so much emphasis on our policy toward the Persian Gulf.

Second, the petroleum reserve—again, which was started in the Carter administration—is of major importance for a large range of oil import crises; and we would like it to be much bigger. The question is finding the money for increasing it.

Senator LONG. People who have had their supply of energy cut off have been known to resort to some pretty desperate measures, such as the British when they started that war over the Suez. And I think that is the sort of desperation we ought to find a way of avoiding here by farsighted policy, such as President Nixon was talking about in 1973. That has been abandoned since then. He didn't have the help he should have had from the Congress. I did what I could to help him at that time, but it seems to me this energy dependence being felt here is not a policy. We are just defining everything that was done under President Nixon, President Ford, even under President Carter. Goodness knows, if we are going to wisely lead this Nation, it seems to me we need some overall perspective that looks at bad situations when we are without it, just as well as situations where we have it in surplus.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. I just have one question for both of you. The question is, How long should these cases take? In the Byrd bill, it is 6 months plus 90 days; and in the Grassley bill, it is 1 year plus 90 days. So, somewhere between 9 months and 15 months, that is what we are talking about. How long should it reasonably take to make all of the findings and the executive branch to put us in a position to wind up one of these cases?

Dr. IKLE. I would think this kind of timeframe, a year or so, is plenty of time. It is not a matter of, as Senator Grassley pointed out, overzealous bureaucrats; sometimes bureaucrats are not zealous enough. And I spend a lot of my time trying to move things faster. I think the reason why some of these cases move slowly is that we just couldn't find a good simple answer. There are cost-cutting considerations.

Senator DANFORTH. But sometimes, you just have to get on with it—just make a decision and get on with it and not just sit and wring our hands. We find that out in Congress also; we just don't seem to be able to get on with making decisions sometimes. And what I am asking is: How long does it take to gather all the information so that you are in a position to bring judgment to bear on the facts? Is it 1 year or less than 1 year?

Dr. IKLE. It should be possible to do it within 1 year.

Senator DANFORTH. Within 1 year? What do you think, Dr. Freedenberg?

Dr. FREEDENBERG. I would agree. There is really no reason to take more than 1 year; but if you cut it too short, you may have difficulty getting the industry surveys that you need to ensure that you know what you are talking about.

Senator DANFORTH. When we are drafting this legislation, would 1 year be about right?

Dr. FREEDENBERG. A year is a reasonable time.

Senator DANFORTH. Say 9 months for Commerce and DOD and 3 months for the President, or should it be split in a different way?

Dr. FREEDENBERG. A year is a reasonable time limit because you can gather the information and you can make a decision. As I said, I would hope that what were unique circumstances in the machine and tool case would not be repeated, and I don't expect that it would be.

Senator DANFORTH. Thank you.

The CHAIRMAN. Any other questions?

Senator GRASSLEY. Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. I have a couple that I want to continue asking of Dr. Freedenberg. Isn't it true that one of the major obstacles that you faced in the 232 machine tool petition was due to the excessive interagency delay tactics instigated by the staff of the National Security Council?

Dr. FREEDENBERG. I would rather not comment. There was a very strong interagency debate, as you are well aware; but I don't want to talk about who did what to whom. But there certainly was a very strong debate for reasonable purposes, that is, that there was a feeling that the data could be interpreted in a number of ways.

Senator GRASSLEY. What are the free trade principles that were brought up in this debate that have to do with national security? That is the real point I am trying to make.

Dr. FREEDENBERG. Yes; essentially, it is a balancing of the two. Obviously, free trade is a good approach to world trade, but at times you have to make exceptions, and that is what the 232 statute is there for. Nevertheless, I think what you had was——

Senator GRASSLEY. You mean that when you are talking about the national security of this country, and a basic industry, you consider free trade on the same level?

Dr. FREEDENBERG. No; in fact, the 232 decision by the President, that is to seek voluntary restraints, demonstrated that national security will take precedence, but——

Senator GRASSLEY. Yes; that is my point. How did the free trade issues get into the debate on a petition that is limited uniquely to national security?

Dr. FREEDENBERG. Free trade was considered in the sense of the health of the domestic economy, that is, you want to make sure that you are not hurting other industries in a way that would also affect national security. And that is essentially what the argument was: that you would either weaken the machine tool industry itself or you would weaken other industries. Nevertheless, when you get down to a scenario in which your capacity to mobilize is severely constrained, then you do come down on the side of the petitioning industry.

Senator GRASSLEY. Now, the President has initiated these voluntary restraint agreements, I guess against the countries of Japan, West Germany, Taiwan, and Switzerland. What is the schedule for these VRA's going into effect?

Dr. FREEDENBERG. We have already concluded our first discussions with Taiwan. I will be going to Japan next week to have our voluntary restraint agreement discussions with them. We hope to conclude them by mid-September.

Senator **Grassley**. All right. What do we plan on doing if any one of these countries, primarily Japan, does not abide by the schedule?

Dr. **Freedenberg**. I wouldn't want to comment on that. The President has the right to take unilateral action, and in fact, is deferring his decision on that unilateral action with the expectation that our allies would rather do this on a voluntary basis.

Senator **Grassley**. I would like to make the point that, as long as we don't know what the President might do, if the administration fails to put teeth into the voluntary restraint agreements and refuses to invoke quotas should the agreement fall through, I want it clear that this is one Senator who is going to introduce legislation to assure that those quotas are imposed. In other words, I want these voluntary restraint agreements to work. I want to compliment the President, even though we did it very late, for moving ahead with it. If they work, so be it; but if they don't work, you know we are going to have to take stronger action here.

Dr. **Freedenberg**. I fully appreciate that.

Senator **Roth**. There is a vote. I think that concludes the questions of you gentlemen.

Senator **Grassley**. I don't have a question to ask, but I am going to submit some questions in writing that would deal directly with the differences between my bill and the Byrd-Roth bill, that I would like to have comments on. And besides sending a copy to the committee, I would like to have a copy of your responses sent to my office directly.

Senator **Roth**. Without objection.

Thank you, gentlemen. We appreciate you being here. We apologize for the long delay. We would like to have Secretary Brown come forward now, if he would. Mr. Secretary, it is always a pleasure to welcome you here, and we all greatly admire you. I regret the delay and the coming in and out of Senators, but I think you are used to that, so it comes as no surprise to you. Would you please proceed?

STATEMENT OF HAROLD BROWN, PH.D., CHAIRMAN, FOREIGN POLICY INSTITUTE, JOHNS HOPKINS SCHOOL OF ADVANCED INTERNATIONAL STUDIES, WASHINGTON, DC; AND FORMER SECRETARY OF DEFENSE

Dr. **Brown**. Thank you very much, Mr. Chairman. It is worth spending the time to be educated on these matters. I have had the chance to do that by listening to the others.

I greatly appreciate the opportunity to appear before you today to talk about some of these issues. In view of the time pressure that you are under, I would like to submit my statement for the record and perhaps just highlight a few points.

Senator **Roth**. Without objection.

Dr. **Brown**. I should begin by saying, Mr. Chairman, that my own attitude toward proposals to invoke national security in order to restrict trade is a very skeptical one.

I believe, for example, that the use of national security considerations to put quotas on steel, textiles, and whatever is by and large not, justified. We would, if we were to get into a protracted conflict, need to be able to produce weapons over a period of time. We would need a steel industry. I don't think we would need a steel industry bigger than we have. I am not sure we would need one as big as we have.

There are issues of national security that are involved in semiconductors—integrated circuits, for example, I think that there is a threat that we may become dependent upon Japanese imports for those purposes. That should be addressed probably by other approaches than eliminating the imports. We should instead do the things that we need to do in order to make our semiconductor equipment industry the leader in the world, which it needs to be for economic as well as for security reasons. And I believe that the health of the economy in general is a very important component of national security.

I don't pose as an expert on the economic implications of the current oversupply of oil nor on tax policy, but I have thought about these issues. And I do think the case of oil is a special case. We need to be able to assure that we avoid additional oil shocks of the kind that we experienced in 1973-74 and again in 1978-79. There are limits to what we can do about that because, as others have already indicated, we are not going to be able to produce all the oil we need ourselves, anyway. Moreover, our European and Japanese allies are always going to continue to be dependent on Middle East oil because they are in a much worse situation in terms of ratio of consumption to production that we are in the United States.

Still, I do fear that we may be setting ourselves up for a new oil shock in the early 1990's by going along with the OPEC strategy of decreasing oil prices and increasing U.S. imports of oil. I think that would be a very serious matter. If you look ahead and assume a reasonable growth in the world economy, then by the early 1990's demand and production capability will be in closer balance, and we could be importing 50 percent of our oil. The free world could be importing 30 percent of its oil from the Middle East.

What can we do to avoid this, to reduce this problem? We can't eliminate it. I mention three things. Since this testimony was prepared a week ago, it recommended something the administration has since done, namely increased its plans to store oil in a strategic petroleum reserve to 750 million barrels. And I applaud that.

I do think that some attention ought to be given to the possible problems of getting oil out of that reserve quickly. I think that that may not have been looked at enough.

Separately, I look at the question of taxes—and since I am out of the Government, I don't have to use a euphemism—on imported oil—or imported oil from outside the Western Hemisphere, if you want to think about it in national security terms—or a gasoline tax. The gasoline tax probably seems more equitable; but if you are trying to assure that U.S. production doesn't go completely down the drain, then an oil import fee or oil import tax is what makes sense.

There, of course, would be lots of claims on that money: reducing deficits, ameliorating the problems of those who are given additional problems by either an increase or a slower decrease in fuel prices, and so forth. But whatever is done with the money, it does seem to me that you could set an oil import fee at a figure high enough to encourage some exploration, drilling, and production capacity in the United States. And if you are worried about windfalls, you can tax them away.

It makes sense to me to institute such a tax; and if you believe, as I believe, that we are storing up for ourselves the possibility of a third oil shock, a tax that encourages continuation of a domestic oil production capability and transfers back to the United States some of the wealth that the OPEC countries took from the United States in the early 1970's and again in the late 1970's, also makes sense.

Thank you, Mr. Chairman.

Senator ROTH. Dr. Brown, as you know, we are on notice that we have to get to the Senate floor to vote, and apparently there are three votes back to back. So, with your permission, I would like to leave the record open so that we could submit questions to you. I regret that genuinely because I know of no one for whom I have greater respect, even though I don't always necessarily agree.

[The prepared written statement of Dr. Brown follows:]

DR. HAROLD BROWN
PREPARED STATEMENT FOR
SENATE FINANCE COMMITTEE HEARING
AUGUST 13, 1986

THE OIL GLUT, NATIONAL SECURITY, AND TAXES

Mr. Chairman and Members of the Committee, I am delighted to appear before you today to share with you some thoughts about the effects of the current oil over supply and corresponding low oil price on U.S. national security. I do not pose as an expert on its economic implications, nor on tax policy, though I have given some thought to both of those matters. But the dependence of the industralized democracies (the U.S. less than others) on oil from the Persian Gulf and the Middle East continues, in my view, to pose a long-range problem for Western security. This is so even though any prospect of an immediate threat has faded with the fall in the ratio of consumption to production capacity, and the corresponding fall in oil prices.

In the short range the effect of the glut on the economic situation has been one of reduced inflation in the industralized democracies, a soft economy in some regions of the United States, and a mixture of losses and gains to Third World nations depending upon whether they are net producers or consumers of oil. In the longer run, however, I fear that we may be setting ourselves up for a new oil shock in the early 1990s. The severe drop in oil prices has greatly reduced exploration for oil and development of known reserves in most parts of the world. In the United

States those activities have been practically shut off. It has led to the virtual termination of development and pilot plant construction for synthetic fuels. Conservation efforts have slowed down, though they have not by any means stopped.

All these are understandable as near term market decisions. But if we look ahead a few years, and make the assumption that the world economy continues to grow at even three percent a year, energy consumption at two percent a year, and oil consumption somewhat above one percent a year, then by sometime early in the 1990s demand and production capability will be in closer balance again. At that time, the U.S. could be expected to import as much as 50 percent of its oil consumption, and perhaps 30 percent or more of Western oil consumption to come from the Middle East and Persian Gulf. The economies of industralized democracies then would once more be susceptible to the political shock attendant on a cut-off, either from war in the Middle East or from a revival of a cartel capability used for political or economic extortion by some of the oil-producing countries. This vulnerability could be less if the West experiences a recession before the end of the decade, and it could be greater if one believes the OMB forecasts of the economy over the next five years.

What are some actions that might at least be considered to reduce the degree of vulnerability to such shocks in the early 1990s? One is to resume filling the strategic petroleum reserve. Its proposed capacity was scaled back from a billion to seven hundred and fifty million barrels early in the 1980s, and the level of fill now stands at about five hundred million barrels. It would make considerable sense to buy the other two hundred and fifty million barrels over a period during which oil prices stand in the neighborhood of $10 a barrel. Moreover, if there are steps that can improve the ability to extract and distribute some of that reserve more quickly and more flexibly in a time of crisis, those should also be taken. The effect of having seven hundred and fifty million barrels available in a crisis would be to provide more time to handle that crisis. Even if import levels were eight million barrels a day, 100 days at normal consumption rates -- and probably double or triple that with conservation efforts that could be implemented in a crisis -- would provide considerable political and strategic flexibility to decision-makers. Even though sharing with allies would be in order, thus reducing the number of days of imports that would be substituted for by the strategic reserve, filling it seems a prudent step to me.

Separately, there is the question of what might be, and what ought to be, done to preserve some exploration and development of oil resources in the United States, so that we do not make the risk worse than it needs to be. Two sorts of taxation have been suggested in response to the fall in oil prices. One is a gasoline tax, which would bring in something approaching a billion dollars for every cent per gallon imposed. The other is an oil import tax, either on all foreign oil or on oil from outside North America (that is, it could exclude Canada and Mexico from the tax). A gasoline tax is probably seen as more equitable, and avoids the charge of windfall profit for American producers. It has relatively little effect on oil security, except for encouraging conservation, since it treats all sources more or less alike. It would not alter the percentage of imports. It could provide substantial revenue, upon which undoubtedly there would be some claims for redistribution to those suffering from higher gasoline tax.

An import tax could be set at a figure high enough to encourage some exploration, drilling, and production capacity in the United States. The tax could be equal to the difference between some arbitrarily set minimum price -- say $17 a barrel -- and the international price. That would amount now to the difference between $17 and $12 dollars per barrel. At the present rate of imports that would approach $10 billion a year. Like the gasoline tax, it would increase the inflation rate slightly. It would also provide considerable revenue for which deficit reduction, defense programs, income transfer programs, and special relief for those who would suffer from higher energy prices would undoubtedly contend. The higher profits that would accrue to U.S. oil producers could be taxed, or even taxed away.

My own judgment is that it would be wise to institute one or the other of the taxes, or some combination of both. If one believes, as I do, that the deficit is a serious problem, taxation on a commodity whose price is falling is a sensible way to get revenue. If one believes, as I do, that we are storing up for ourselves the possibility of a third oil shock, a tax that encourages continuation of a domestic oil production capability and transfers back some of the rent that the OPEC countries took from the United States in the early 1970s and again in the late 1970s also makes sense. And so does filling the strategic petroleum reserve.

Thank you very much.

Senator **Roth**. I would also say that the final panel has agreed to submit their statements for the purposes of the record. So, the committee is now in recess, subject to the recall of the chairman.

Thank you again, Dr. Brown.

Dr. **Brown**. Thank you, Senator.

[Whereupon, at 11:56 a.m., the hearing was adjourned.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

Statement

Before The

Committee on Finance
United States Senate

Regarding

Section 232 of The Trade Expansions Act of 1962

By

Julius L. Katz

Vice President
The Consultants International Group, Inc.

August 7, 1986

Mr. Chairman:

I am Julius L. Katz. From 1976 to 1979 I served as Assistant Secretary of State for Economic and Business Affairs. I was a senior officer of an international trading company from 1980 to 1985 and for the past year I have worked as an international business and financial consultant. I am appearing here in my own capacity at the invitation of the Committee.

Section 232 of the Trade Expansion Act of 1962, the national security provision, has been a part of US trade law for more than thirty years. Over this period of time there have been some fifteen investigations involving some ten industries. In only one case, however, have Presidents invoked Section 232 to limit imports. That one case, of course, has been petroleum and petroleum products.

In the recent case involving machine tools, President Reagan undertook to secure limitations of imports by means of voluntary agreements with certain exporting nations. He deferred, however, a formal decision in this case.

There are good reasons why Presidents have been reluctant to use the national security provision to limit imports. For one thing, it was made explicit, when Section 232 was first enacted in 1955, that the concept of national security should be viewed in a very broad context. The Chairman of the Ways and Means Committee, in explaining the national security provisions to the House, referred to a statement made earlier by President Eisenhower relating national security to our overall foreign economic policy. The Chairman stated that:

> "The President would, as he indeed must under the Constitution, consider our total national security in all its aspects and make his determination on the basis of all the factors bearing on our national security. In arriving at his decision he must consider the impact of that decision on our total foreign policy, and on the economics of the nations of the free world that are allied with us. He must also consider the impact of any decision on our overall strength and security, keeping in mind that any modification of a duty on imports or a quota would inevitably result in a curtailment of exports by the United States. Such actions would not only be a burden on domestic industry to its economic disadvantage but also would be to the disadvantage of our national security." [101 Cong. Rec 8161 (June 14, 1955)]

A second reason for reluctance to use the national security provision is the clear intent of the Congress that the provision not be used as an alternative means of securing relief from imports. In its report on the Trade Agreements Act of 1958, the Ways and Means Committee noted that:

> "Serious injury to a particular industry, which is the principal consideration in the escape-clause procedure, may also be a consideration bearing on the national security position in particular cases, but the avoidance or remedy of injury to industries is not the object per se." (of the national security clause). [H. Rept. No. 1761, 85th Cong., 2d Sess., p. 13 (1958)]

A third reason for reluctance to use the provision is that in virtually all of the cases investigated, the circumstance of the particular industry examined had to do with a complex of problems, of which imports were but one. Imports appeared to be more a manifestation of the problem than the root cause. The underlying problems more often were those associated with mature industries slow to adapt to technological change. In some cases the problems were magnified by sluggish economic growth.

Finally, there is the question whether the limitation of imports is the most appropriate or useful course of action in those cases where it is believed that a product "is being imported in such quantities as to threaten to impair the national security." Many observers have noted the anomaly of the oil import program, maintained from 1959 to the mid 1970's, which encouraged the depletion of the nation's oil reserves in the interest of national security.

A limitation of imports might not of itself improve the competitive position of the industry or insure its technological progress. Import restrictions could have an opposite effect from that required to promote national security. A limit on imports could also worsen the competitive position of other consuming US industries and thus impair national security in other areas.

As alternatives to import restrictions, there are available to the Government such measures as stockpiling, tax policy, merger policy, promotion of R&D, etc., to improve the competitiveness of firms or industries vital to the national security. It is conceivable that in some instances, a degree of import restraint, combined with other direct help measures, could speed the recovery of critical industries. Experience has demonstrated, however, that import restraints tend to delay necessary reforms rather than to facilitate them.

I would like to address now the changes proposed in Section 232, particularly those having to do with the specification of time limits for decision by the President. I can see nothing to be gained by putting such restraints upon the President. The investigations called for by Section 232 are mostly complex and require the consideration of many factors, and, as I have indicated, alternative courses of action. The President, as the Commander-in-Chief, does not treat matters of national security casually or carelessly, and would not fail to take action as expeditiously as circumstances warrant. The unintended effect of a ninety-day limit on Presidential action could be to terminate a case earlier than might be desired.

In summary, I would say that Section 232 should not be amended as proposed. The provision serves a useful purpose in causing investigations of situations where the volume of imports could threaten or impair national security. The utility of the provision should not be measured by the frequency of its use but rather by the fact that it is an authority that is there when needed.

Thank you, Mr. Chairman.

STATEMENT OF

MATTHEW J. MARKS

PARTNER, WENDER MURASE & WHITE

AUGUST 7, 1986

HEARING OF SENATE FINANCE COMMITTEE

ON

PROPOSALS TO AMEND SECTION 232 OF

THE TRADE EXPANSION ACT OF 1962

This material is circulated by Wender Murase & White, 1120 Twentieth Street, N.W., Suite 650, Washington, D.C. 20036, which is registered under the Foreign Agents Registration Act with the Department of Justice, Washington, D.C., as an agent for the Japan Machine Tool Builders' Association, Japan Metal Forming Machine Builders' Association and Japan Machinery Exporters' Association, Kikai Shinko Building, 5-8-3, Shibakoen, Minato-ku, Tokyo 105, Japan. Copies of this material are filed with the Department of Justice where the required registration statement is available for public inspection. Registration does not indicate approval of the content of this material by the United States Government.

SUMMARY OF PRINCIPAL POINTS INCLUDED IN STATEMENT

Presidents have been reluctant to implement Section 232. Their concern has been that U.S. action under Section 232 might become a precedent for encouraging our trading partners to abuse the national security exception in the General Agreement on Tariffs and Trade (GATT). Under the GATT national security exception, any country can claim the right to ignore GATT trading rules under circumstances it alone deems appropriate. Our trading partners have until now generally refrained from opening this Pandora's box, for they are aware it has the potential to destroy the GATT and with it the international trading system as we know it. In light of this background, it would not be in the U.S. interest to impose time constraints forcing Presidential decisions under Section 232.

If Congress decides to amend Section 232, it should consider including a definition of "national security". An amendment might also appropriately require the President to report annually to Congress on actions taken under Section 232. Where the President has failed to act, Congress could appropriately require that the President explain the reasons for the inaction.

INTRODUCTION

Mr. Chairman and Members of the Committee.

My name is Matthew J. Marks. I am a partner in the law firm of Wender Murase & White. I have been invited to testify today because of my background in government service. I served in the Treasury Department for more than 30 years, completing my service there as Deputy Assistant Secretary for Tariff and Trade Affairs, in which post I was primarily responsible for administration of the antidumping and countervailing duty laws. During my Treasury career, I was assigned to the National War College for one year and later to national security matters in the Treasury Department.

My firm represents the three Japanese machine tool associations, and we are involved in the current Section 232 investigation of machine tools. Because of this, my firm is registered under the Foreign Agents Registration Act. However, I am appearing today strictly in a personal capacity.

I shall dispense with a technical analysis of S. 1871, since this is being provided by another witness. I shall address myself in this statement to certain policy issues raised by S. 1871.

ISSUES RAISED BY S. 1871

1. Should there be a law on the books which allows the President flexibility to impose restraints on imports for national security reasons?

The answer is clearly yes. Situations can arise where it may be in the U.S. interest to restrict imports on national security grounds. It is therefore important that the President have authority to take action in situations where it may be deemed necessary. However, the provisions of the statute authorizing the imposition of import restraints on national security grounds must not be relied on as a substitute for import relief more appropriately covered by the unfair trade laws and the Section 201 escape clause provision.

2. What should be the limits on Presidential discretion in implementing such a law?

The limits on Presidential discretion should be broad. It should be recognized from the outset that it is only in rare cases that a President is likely to find it appropriate to impose import restrictions based on national security considerations. This is demonstrated by the history of Section 232. Although there have been 16 applications for import relief under Section 232 since 1964, such relief has been granted only once, i.e., when President Nixon imposed restrictions on oil imports.

The principal reason for this reluctance of Presidents to invoke Section 232, I believe, is the concern that the extensive granting of relief on this basis could cause the international trading system, as we know it, to unravel. There is a national security exception in the General Agreement on Tariffs and Trade (GATT), Article XXI. The exception provides that nothing in the Agreement is to be construed as preventing a contracting party from taking action which it considers necessary for the protection of its essential security interests relating to traffic in goods and materials carried on directly or indirectly for the purpose of supplying a military establishment. The United States has officially taken the position that the General Agreement leaves to the judgment of each contracting party what it considers necessary for the protection of its security interests. The United States has also taken the position that other contracting parties have no power to question judgments on this issue made by a GATT signatory.

It is obvious, in light of this history, that the national security exception can easily become subject to abuse. The production of almost any item can be claimed to be "directly or indirectly for the purpose of supplying a military establishment". As an example, in 1975 the Swedish Government justified on national security grounds a global quota on imports of certain footwear, contending its action was in conformity with the spirit of GATT Article XXI. On this same basis, any of our trading partners could likewise justify import restrictions on many agricultural, forest or manufactured products.

Although abuses of the GATT national security exception have fortunately been rare until now, they nevertheless remain a threat hanging over the GATT system. This explains, I believe, the reluctance of Presidents to take affirmative actions on Section 232 applications. To the extent the United States resorts to Section 232 as a justification for imposing import restrictions, our trading partners would very probably follow suit.

The term "national security" covers an intermix of many policies, military, economic and political. Because of this intermix, the President requires maximum discretion in deciding whether to act in individual Section 232 cases. Congress, in granting such discretion, should recognize the reality that Presidents are unlikely to make vigorous use of Section 232, for to do so would clash with other important U.S. interests, particularly the U.S. objective of maintaining a free and open trading system.

3. Is it in the U.S. interest to impose time limits for Presidential action in Section 232 cases?

For the reasons described in answer to the preceding question, the President requires broad discretion in dealing with Section 232 cases. Forcing the President to act within stipulated time constraints would inevitably restrict the President's flexibility for action. For example, although a President may be reluctant to take action under Section 232 for the reasons specified earlier, he may still wish to hold the threat of such action over the heads of foreign exporters and their governments as a bargaining chip. This is, in essence, the line of action that the President appears to be following in the current machine tool case. The President's statement of May 20, 1986 announcing his decision to seek Voluntary Restraint Agreements with Taiwan, West Germany, Japan and Switzerland implies that any country which refuses to enter into a reasonable agreement with the United States might find itself confronted with Presidential action under Section 232. To the extent that time constraints restrict the President's options for maneuver in Section 232 cases they are undesirable.

The requirement in the bill that the President implement the recommendations of the Secretary of Commerce if the President fails to act within a specified time period is particularly objectionable. It makes no sense in our Constitutional system to require the President to carry out the recommendations of one of his subordinates. Because of this, it would probably not work. If such a provision were enacted into law, the Secretary of Commerce would very probably clear his recommendations informally with the White House before formally issuing his report.

4. Should Presidential discretion in Section 232 cases be without any limit whatsoever? If not, what changes in current law would be desirable?

Congress shares a legitimate interest with the Executive Branch in the area covered by Section 232. Therefore, the President ought not to have unlimited discretion with respect to actions under Section 232. Accordingly, Congress should consider amending the statute to define what "national security" means in the context of Section 232. Such a definition could appropriately include some or all of the elements set forth in Subsection (c) of the statute, which lists the elements to be taken into account by the Secretary of Commerce in connection with Section 232 investigations.

It would also be quite appropriate for Congress to require the President to report annually to the Congress concerning actions taken under Section 232. Such reports might well include a statement of the outstanding Section 232 investigations, together with the actions taken thereon. In cases where the President fails to act, it could appropriately be required that the reports highlight the reasons for the inaction.

U.S. Department of Justice
Washington, DC 20530

Supplemental Staten
Pursuant to Section 2 of the Foreign Agents Registration Act of 1938, as amended.

OMB No. 1105-0002
Approval Expires Oct. 31, 1986

INSTRUCTION SHEET—READ CAREFULLY

1. *Use.* All persons registered under this Act shall use this form in submitting supplemental statements required by Section 2(b). Upon termination of the agency which required registration, a final statement shall be filed on this form for the final period of the agency not covered by the previous statements, as required by Rule 205.

2. *Read Act and Rules.* Registrant should carefully read the Act and the Rules thereunder before filling in this form.

3. *Typewritten.* The completed form should be typewritten but will be accepted for filing if written legibly in ink.

4. *Copies.* Copies of any document made by any of the duplicating processes may be filed if they are clear and legible.

5. *Answer.* Unless otherwise specifically instructed in this form, a registrant shall answer every item on this form.

6. *Inserts.* Inserts and riders of less than full page size shall not be used. Whenever insufficient space is provided for response to any item, reference shall be made in such space to a full insert page or pages on which the item number and inquiry shall be restated and a complete answer given.

7. *Incorporation by Reference.* This statement shall be complete in and of itself. Incorporation of information by reference to statements previously filed is not permissible.

8. *Filing.* Two copies of this statement, including all exhibits and attachments, shall be filed with the Criminal Division, Internal Security Section, U.S. Department of Justice, Washington, D.C. 20530. Both copies must be sworn to before a notary public or other officer authorized to administer oaths. A third copy should be retained by the registrant.

9. *Filing Date.* This statement must be filed within 30 days after the expiration of a six-month period. This period of time may be extended for good cause shown only upon written application by the registrant prior to the expiration of the 30 day period.

NOTE. *Omit this instruction sheet when filing this statement.*

Formerly OBD-64

FORM CRM-154
FEB 84

U.S. Department of Justice
Washington, DC 20530

Supplemental Statement
Pursuant to Section 2 of the Foreign Agents Registration Act of 1938, as amended.

OMB No. 1105-0002
Approval Expires Oct. 31, 198[illegible]

For Six Month Period Ending May 4, 1986
(Insert date)

Name of Registrant Wender, Murase & White	Registration No. 3419

Business Address of Registrant
1120 20th Street, N.W., Suite 650
Washington, D.C. 20036

I—REGISTRANT

1. Has there been a change in the information previously furnished in connection with the following:

(a) If an individual:

(1) Residence address	Yes ☐	No ☐
(2) Citizenship	Yes ☐	No ☐
(3) Occupation	Yes ☐	No ☐

(b) If an organization:

(1) Name	Yes ☐	No ☒
(2) Ownership or control	Yes ☐	No ☒
(3) Branch offices	Yes ☐	No ☒

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CRIMINAL [illegible]
REGI[illegible] UNIT

2. Explain fully all changes, if any, indicated in item 1.

Not applicable

IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4, and 5.

3. Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes ☒ No ☐

If yes, furnish the following information:

Name	*Position*	*Date Connection Ended*
Donald W. Hamaker	Partner	1/24/86
Wayne E. Partridge	Partner	3/31/86

4. Have any persons become partners, officers, directors or similar officials during this 6 month reporting period?
Yes ☒ No ☐

If yes, furnish the following information: See bottom of page

Name	*Residence Address*	*Citizenship*	*Position*	*Date Assumed*

5. Has any person named in Item 4 rendered services directly in furtherance of the interests of any foreign principal?
Yes ☐ No ☒

If yes, identify each such person and describe his services.

6. Have any employees or individuals other than officials, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Position or connection*	*Date terminated*

7. During this 6 month reporting period, have any persons been hired as employees or in any other capacity by the registrant who rendered services to the registrant directly in furtherance of the interests of any foreign principal in other than a clerical or secretarial, or in a related or similar capacity? Yes ☐ No ☒

If yes, furnish the following information:

Name	*Residence Address*	*Position or connection*	*Date connection began*

Response to question 4

Michael Jacobster -	110 East 87th Street New York, New York 10028	USA Partner	3/17/86
Jane Harman -	3550 Williamsburg Lane, N.W. Washington, D.C. 20008	USA Partner	1/1/86
Richard G. Wallace -	1962 Rangeview Drive Glendale, CA 91201	USA Partner	1/13/86

II—FOREIGN PRINCIPAL

8. Has your connection with any foreign prinicpal ended during this 6 month reporting period? Yes ☒ No ☐

If yes, furnish the following information:

Name of foreign principal	*Date of Termination*
Bibby-Ste. Croix Foundries, Inc. 202 Beverly Street, Cambridge Ontario, Canada N1R 5T8	3/5/86

9. Have you acquired any new foreign principal[1] during this 6 month reporting period? Yes ☒ No ☐

If yes, furnish following information:

Name and address of foreign principal	*Date acquired*
Bibby-Ste. Croix Foundries, Inc. 202 Beverly Street, Cambridge Ontario, Canada N1R 5T8	2/6/86

10. In addition to those named in Items 8 and 9, if any, list the foreign principals[1] whom you continued to represent during the 6 month reporting period. Japan Tobacco, Inc. ("JTI"); Sumitomo Electric Industries, Ltd. ("SEI"); Japan Machine Tool Builders' Association ("JMTBA"); Japan Metal Forming Machine Builders' Association ("JMFMBA"); Japan Machinery Exporters' Association ("JMEA"); Sumitomo Metals Industries, Ltd. ("SMI")

III—ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement? Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail your activities and services:

See Attachment A

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[1] The term "foreign principal" includes, in addition to those defined in section 1(b) of the Act, an individual or organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a)(9)).

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those foreign principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

12. **During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity[2] as defined below?**
Yes ☒ No ☐

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates, places of delivery, names of speakers and subject matter.

See Attachment A

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13. **In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals? Yes ☐ No ☒**

If yes, describe fully.

---

[2] The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV—FINANCIAL INFORMATION

14. (a) **RECEIPTS—MONIES**
During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies.[3]

Date	*From Whom*	*Purpose*	*Amount*
12/6/85	JMTBA, JMFMBA, JMEA	Fees & expenses	760.53
1/23/86	JMTBA, JMFMBA, JMEA	Fees & expenses	1,585.77
2/13/86	JMTBA, JMFMBA, JMEA	Fees & expenses	3,141.59
3/26/86	JMTBA, JMFMBA, JMEA	Fees & expenses	914.54
5/2/86	Bibby Ste. Croix Foundries, Inc.	Compensation for services described in answer to Question 11	2,028.00
		Total	$8,430.43*

* The amount disclosed is attributable to non-exempt activities only. Additional fees and expenses were received for exempt legal activities.

(b) **RECEIPTS—THINGS OF VALUE**
During this 6 month reporting period, have you received any thing of value[4] other than money from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal?
Yes ☐ No ☒

If yes, furnish the following information:

Name of foreign principal	*Date received*	*Description of thing of value*	*Purpose*

---

[3] A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. See Rule 201(e).

[4] Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) **DISBURSEMENTS—MONIES**

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement? Yes ☒ No ☐

(2) transmitted monies to any such foreign principal? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

Date	*To Whom*	*Purpose*	*Amount*
JMTBA, JMFMBA, JMEA			
11/85	Miscellaneous	Telephone, xerox, messenger services, etc.	40.80
12/85	Miscellaneous	Telephone, etc.	3.51
1/86	Miscellaneous	Telephone, etc.	36.54
2/86	Miscellaneous	Telephone, etc.	13.28
3/86	Miscellaneous	Telephone, etc.	173.16
4/86	Miscellaneous	Telephone, etc.	142.79
			$409.79
Bibby Ste. Croix			
2/86	Miscellaneous	Telephone, taxis, xerox and meals	123.00

$532.79*
Total

* The amount disclosed is attributable to non-exempt activities only. Additional disbursements were made for exempt legal activities.

15. (b) DISBURSEMENTS—THINGS OF VALUE

During this 6 month reporting period, have you disposed of anything of value[3] other than money in furtherance of or in connection with activities on behalf of any foreign principal named in items 8, 9 and 10 of this statement?
Yes ☐ No ☒

If yes, furnish the following information:

Date disposed	*Name of person to whom given*	*On behalf of what foreign principal*	*Description of thing of value*	*Purpose*

(c) DISBURSEMENTS—POLITICAL CONTRIBUTIONS
During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value[3] in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?
Yes ☐ No ☒

If yes, furnish the following information:

Date	*Amount or thing of value*	*Name of political organization*	*Name of candidate*

V—POLITICAL PROPAGANDA

(Section 1(j) of the Act defines "political propaganda" as including any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.)

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any political propaganda as defined above? Yes ☐ No ☒

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

17. Identify each such foreign principal.

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[3] Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating political propaganda? Yes ☐ No ☐

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of political propaganda include the use of any of the following:

☐ Radio or TV broadcasts	☐ Magazine or newspaper articles	☐ Motion picture films	☐ Letters or telegrams
☐ Advertising campaigns	☐ Press releases	☐ Pamphlets or other publications	☐ Lectures or speeches

☐ Other *(specify)* ____________________

20. During this 6 month reporting period, did you disseminate or cause to be disseminated political propaganda among any of the following groups:

☐ Public Officials	☐ Newspapers	☐ Libraries
☐ Legislators	☐ Editors	☐ Educational institutions
☐ Government agencies	☐ Civic groups or associations	☐ Nationality groups

☐ Other *(specify)* ____________________

21. What language was used in this political propaganda:
☐ English ☐ Other *(specify)* ____________________

22. Did you file with the Registration Section, U.S. Department of Justice, two copies of each item of political propaganda material disseminated or caused to be disseminated during this 6 month reporting period? Yes ☐ No ☐

23. Did you label each item of such political propaganda material with the statement required by Section 4(b) of the Act?
Yes ☐ No ☐

24. Did you file with the Registration Section, U.S. Department of Justice, a Dissemination Report for each item of such political propaganda material as required by Rule 401 under the Act? Yes ☐ No ☐

VI—EXHIBITS AND ATTACHMENTS

25. EXHIBITS A AND B

(a) Have you filed for each of the newly acquired foreign principals in Item 9 the following:

Exhibit A[6]	Yes ☒	No ☐
Exhibit B[7]	Yes ☒	No ☐

If no, please attach the required exhibit.

(b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during this six month period? Yes ☐ No ☒

If yes, have you filed an amendment to these exhibits? Yes ☐ No ☐

If no, please attach the required amendment.

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[6] The Exhibit A, which is filed on Form CRM-157 (Formerly OBD-67) sets forth the information required to be disclosed concerning each foreign principal.

[7] The Exhibit B, which is filed on Form CRM-155 (Formerly OBD-65) sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

26. **EXHIBIT C**

If you have previously filed an Exhibit C[6], state whether any changes therein have occurred during this 6 month reporting period. Yes ☐ No ☐

Not applicable

If yes, have you filed an amendment to the Exhibit C? Yes ☐ No ☐

If no, please attach the required amendment.

27. **SHORT FORM REGISTRATION STATEMENT**

Have short form registration statements been filed by all of the persons named in Items 5 and 7 of the supplemental statement?
Yes ☐ No ☐
Not applicable

If no, list names of persons who have not filed the required statement.

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration statement and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) personal knowledge.

(Type or print name under each signature)

(Both copies of this statement shall be signed and sworn to before a notary public or other person authorized to administer oaths by the agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions who are in the United States, if the registrant is an organization.)

Arthur J. Gajarsa
Richard Linn
Jane Harman
Matthew J. Marks
Carl J. Green

Subscribed and sworn to before me at Washington DC

this 1st day of July, 1986

Sara Eva Mann
(Signature of notary or other officer)

My Commission Expires October 14, 1989

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[6] The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, Criminal Division, Internal Security Section, U.S. Department of Justice, Washington, D.C. 20530.)

ATTACHMENT A

1. **BIBBY-STE. CROIX FOUNDRIES, INC.** - Registrant represented Bibby-Ste. Croix in an antidumping proceeding before the Department of Commerce, Docket No. A-122-503. In addition to exempt activities performed by the registrant on behalf of Bibby-Ste. Croix, registrant engaged in non-exempt political activities to the extent that registrant discussed the implications of the Department's final determination of sales at less than fair value with the following Congressional staff personnel:

Date	Identity of Staff Personnel
2/4/86	Rufus Yerxa, Staff Director, Subcommittee on Trade, Ways and Means Committee
2/13	Rufus Yerxa
2/18	Leonard Santos, Majority International Trade Counsel, Finance Committee
2/19	Leonard Santos Patricia Eveland, Administrative Assistant, Congressman William Frenzel
2/20	Rufus Yerxa
2/21	Patricia Eveland
2/26	Patricia Eveland

2. **SUMITOMO METAL INDUSTRIES, INC.** - Exempt legal services; no activities subject to reporting.

3. **SUMITOMO ELECTRIC INDUSTRIES, LTD.** - Exempt legal services; no activities subject to reporting.

4. **JAPAN MACHINE TOOL BUILDERS' ASSOCIATION, JAPAN METAL FORMING MACHINE BUILDERS' ASSOCIATION, JAPAN MACHINERY EXPORTERS' ASSOCIATION** - Registrant represents these organizations in connection with a pending proceeding under Section 232 of the Trade Expansion Act of 1962 relating to possible restrictions on imports of certain machine tools and, in that connection, in addition to exempt legal services, registrant has engaged in oral communications with members of the press regarding issues relating to machine tool imports.

5. **JAPAN TOBACCO, INC.** - Exempt legal services; no activities subject to reporting

UNITED STATES DEPARTMENT OF JUSTICE
REGISTRATION UNIT
CRIMINAL DIVISION
WASHINGTON, D.C. 20530

NOTICE

Please answer the following questions and return this sheet in triplicate with your supplemental statement:

1. Is your answer to Item 16 of Section V (Political Propaganda - page 7 of Form OBD-64 - Supplemental Statement):

Yes ____________ or No X

(If your answer to question 1 is "yes" do not answer question 2 of this form.)

2. Do you disseminate any material in connection with your registration:

Yes ____________ or No X

(If your answer to question 2 is "yes" please forward for our review copies of all such material including: films, film catalogs, posters, brochures, press releases, etc. which you have disseminated during the past six months.)

Matthew Marks
Signature

7/2/86
Date

Matthew J. Marks
Please type or print name of signatory on the line above

Partner
Title

STATEMENT BY
JAMES H. MACK
PUBLIC AFFAIRS DIRECTOR
NATIONAL MACHINE TOOL BUILDERS' ASSOCIATION
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
AUGUST 7, 1986

I. INTRODUCTION

Good morning, my name is James H. Mack. I am Public Affairs Director of the National Machine Tool Builders' Association (NMTBA), a national trade association representing more than 375 companies which account for approximately 85% of domestic machine tool production.

NMTBA appreciates this opportunity to comment on S.1860, the omnibus trade reform proposal currently under consideration by the Committee. Most members of this panel share our deep concern regarding the unmistakable decline in America's industrial competitiveness, and we commend the depreciation improvements you enacted last month in recognition of that concern. We urge you to remain steadfast in retaining those improvements during the weeks ahead in your tax reform conference with the House.

Machine tools provide the core of any nation's basic manufacturing capability -- and thus its international competitiveness. Machine tools are the underpinning of industrial strength and defense preparedness. A healthy machine tool industry is, we believe, essential in restoring the U.S. to its once-predominant position in the global marketplace.

The future of America's basic manufacturing industries, including machine tools, will, to a considerable degree, be shaped by the substance and interpretation of U.S. trade laws. These laws ostensibly were enacted to provide statutory remedies to domestic industries in competitive distress. But all too often the ambiguous language and uneven, ineffective application -- coupled with the indifference of some government officials responsible for their enforcement -- combine to make these "remedies" more elusive than real. We, therefore, applaud the bipartisan initiative to adopt meaningful revisions to the trade laws -- revisions which, as our comments below will illustrate, are long overdue.

II. OMNIBUS TRADE REFORM LEGISLATION

A. National Security Import Relief

NMTBA has on several occasions appeared before this Committee to discuss the machine tool industry's request for temporary import relief filed in March, 1983 under Section 232 (the National Security Clause) of the Trade Expansion Act of 1962. We are pleased to report to you that, on May 20, 1986, the President announced his decision to seek Voluntary Restraint Agreements (VRAs) on machine tool imports. Characterizing the machine tool industry as a "small yet vital component of the U.S. defense base," the President directed that import levels of seven categories of machine tools from Japan, Taiwan, West Germany and Switzerland "be reviewed within the next six months." Should such negotiations prove to be unsuccessful in reducing imports to levels which no longer threaten to impair the national security, the President could, pursuant to Section 232, impose mandatory import restrictions.

Additionally, the President announced that the Departments of Defense and Commerce are to implement an action that will: integrate more fully U.S. machine tool manufacturers into the defense procurement process; modernize machine tool capabilities that support our national defense programs; provide up to $5 million per year over the next three years in federal matching funds to support a private sector manufacturing technology center; investigate the potential for cooperative research and development. Further, Secretary of Commerce Baldrige has been charged with monitoring the industry's performance.

NMTBA believes that the President's decision will prove to be a positive step in maintaining and improving America's strength by helping to assure the Defense Department a more reliable domestic supply of the machines that produce tanks, airplanes, ships, ammunition and other defense needs. However, it is important to recognize that, in the three years since the Petition's initial submission, at least 25 percent of machine tool companies then in existence have either gone out of business, have been bought up by other interests, or have effectively moved all or part of their manufacturing operations offshore. We are hopeful that the President's response will help stem this precipitous deterioration and thereby strengthen the national security.

We would like to take this opportunity to publicly acknowledge the strong support that Senators Grassley, Danforth, Heinz and Dole -- and other members of this Committee -- have shown throughout the prolonged pendency of the industry's import relief Petition. The industry sincerely appreciates your collective efforts on its behalf. As a matter of fact, it could be persuasively argued that it was pressure applied by you and your colleagues in the Congress which ultimately forced senior White House staff to end the incessant delays perpetrated by their subordinates and to finally bring our Petition to a resolution.

We are pleased to appear in support of the provision, originally introduced by Senator Charles Grassley, imposing a 90-day time limit in which the President must decide whether to restrict imports that impair or threaten to impair the national security. This time limit goes into effect only after an investigation -- which, under the statute, may take up to one year -- by the Secretary of Commerce results in a finding that imports pose a threat to national security. The deadline would apply to any 232 case which is pending at the White House as of the date of the provision's enactment. Since a Presidential decision in our own case has already been reached, it is obvious that these statutorily-imposed deadlines will have no direct bearing on the outcome of the industry's Petition. Nevertheless, we took this opportunity to testify because we believe that sharing our difficult experience with the 232 process -- a process riddled with pitfalls and unnecessary delays -- will perhaps help the Committee to more readily appreciate the urgent need for 232 reform.

We thought it would be helpful to preface our remarks with a brief overview of the legislative history surrounding the National Security Clause. The Clause serves as a nexus between the trade and national security policies of the United States.[1] It reflects the longstanding policy of Congress, to which our Constitution gives primary responsibility for the management of international trade, that any advantages from international trade during peacetime must be subordinated to reasonable precautions for the national security. This policy, and the terms of the Clause itself, are entirely consistent with prevailing international law and are expressly acknowledged in Article XXI of the GATT. Indeed, it could hardly be otherwise for no obligation of the federal government is more important than the protection of national security.

Enactment of the Clause, originally part of the Trade Agreement Extension Act of 1954, was precipitated in part by serious bottlenecks of militarily strategic equipment -- including machine tools -- which occurred during World War II and the Korean conflict. Congress recognized that considerations of deterrence and promptness of military response required a production capacity adequate to satisfy an immediate sharp increase in the demand for such equipment.

It is evident that the principle on which the National Security Clause rests is completely different from those that underlie other statutory provisions for trade relief. Import relief under the Clause is mandated wherever it is shown that imports "threaten to impair the national security" -- no showing of unfair trade practices or market manipulation, or that imports caused the conditions in the affected industry, is required.

We want to emphasize that the machine tool industry has long been recognized by defense experts as uniquely essential to military production. The products and technology of this industry are the essence of the industrial manufacturing process - they are, by definition, the "tools" of production. As such, machine tools are needed to produce every ship, plane, tank, missile, transport vehicle and other armament used by our armed forces, as well as essential elements of the supporting civilian infrastructure.

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[1] The essential core of the National Security Clause, on which the industry's Petition rests, is as follows:

> "If the Secretary [of Commerce] finds that such an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." 19 U.S.C. § 1862(b) (Supp. V 1981).

It is clear, therefore, that the industry's request for import relief on national security grounds could not credibly be challenged. While we concede that some industries can proceed under Section 232 more appropriately than others, the legislative history illustrates that machine tools are precisely what Congress had in mind when it enacted the statute. Thus, we remained unpersuaded that -- as some government officials claimed -- a prompt and favorable disposition of our case would inevitably lead to a deluge of similar relief requests by other industries.

Having reviewed the policy considerations which underlie the National Security Clause, we turn now to the particulars of our own 232 case. The industry's Petition was filed with the Secretary of Commerce on March 10, 1983. The industry requested that, based on then-current levels of high-technology and defense-sensitive machine tool imports, temporary quotas be imposed on certain categories. Pursuant to the statute, the Secretary commenced a comprehensive investigation of the industry's request -- a request supported literally by hundreds of pages of textual and statistical documentation. Secretary Baldrige complied with his statutory obligation by completing the investigation within one year. On February 28, 1984 he submitted a reportedly favorable recommendation on the industry's request to the White House -- where it languished until May 20, 1986, when the President announced his decision to seek VRAs.

Though we were aware that the statute imposed no deadline on the President, we assumed that the urgency of the Secretary's finding would, in and of itself, assure a prompt -- though not necessarily favorable -- resolution of the issue. We couldn't have been more wrong. From the time the Petition left the Department of Commerce, it bore the brunt of excessive interagency delay tactics instigated by the staff of the National Security Council -- and, we believe, deliberate subterfuge by NSC staffers determined to keep the issue from reaching the President's desk. These actions reportedly stemmed from over-zealous adherence to "free trade" principles -- considerations which, as we have explained, have no bearing on import relief cases filed under the National Security Clause!

Something is very wrong with a process which permits a national security issue of this magnitude to drag on for more than two years. The inordinate delay has, in fact, added a new dimension to the national security threat posed by machine tool imports -- the fact that staff-level bureaucrats can exert enough influence to, in effect, "bury" the industry's Petition is, in itself, a serious national security problem that simply cannot be ignored.

In addition, the delay has exacerbated the national security threat posed by machine tool imports, which have nearly doubled since the Petition was filed -- from 27% of domestic consumption in 1983 to an estimated 53% during the first quarter of 1986. While the NSC staff was trying to end-run the statute, U.S. machine tool companies were faced with crucial investment decisions concerning their future -- whether to move production capacity offshore and, in some cases, whether to remain in the business of machine tool manufacturing at all. Most machine tool builders were willing to postpone these decisions for a reasonable period of time, believing that an answer to the industry's Petition would provide them with a more informed climate for decision-making. However, choices such as these could not be put off indefinitely -- the unmistakable trend towards offshore production illustrates the direction ultimately taken by many machine tool manufacturers. We cannot help but believe that the resulting erosion of U.S. manufacturing capability could have been, at least partially, halted had the Petition been resolved in a timely fashion.

It strikes us as somewhat ironic that industries seeking import relief under statutes unrelated to the urgent issue of national security are, by virtue of statutory deadlines imposed on Presidential decision-making, assured of a timely answer. By contrast, the open-ended nature of Section 232 in effect operates as a trap for the unwary -- consider, for example, that NMTBA, in a good faith effort to comply with the statute and with the expectation that our request would be expeditiously considered, spent nearly one million dollars in attempting to "prove" our case to the government.

The law is on the books; it should either be enforced or repealed. Certainly we are aware that there are no guarantees that any industry seeking import relief under Section 232 will get the answer that it wants -- but it should get a timely answer. Our national security depends on it.

B. Industrial Targeting

NMTBA strongly believes that broad-based trade reform legislation reported by this panel would be incomplete without a provision adequately addressing industrial targeting practices by foreign governments. Such targeting practices include selectively impeding foreign competition in the home market, directly financing research and development, granting concessionary loans and special tax benefits, and restricting technology transfer -- when a combination of these practices, perpetrated schematically, operates to distort competition in a specific industrial sector. Such practices pose severe competitive problems for U.S. companies, whose products may be excluded from protected markets, and/or for U.S. firms who must compete here at home -- or in third country markets -- with unfairly subsidized imports. More importantly, a serious threat to the national security arises when the targeting victim is an industry critical to the maintenance of the U.S. defense base.

Attention to the targeting practices was heightened in 1982 when Houdaille Industries, Inc., a Florida-based machine tool manufacturer, alleged that the Japanese government had unfairly targeted the Japanese machine tool industry in a variety of ways, though principally by creating a cartel of producers of numerically controlled machine tools. Members of the Committee may recall that Houdaille filed a petition under Section 103 of the Revenue Act of 1971, which authorizes the President, at his discretion, to suspend the availability of the investment tax credit for imported products if he determines that the country of origin engages in discriminatory acts or policies which unjustifiably restrict U.S. commerce. Despite strong support for Houdaille's position in a resolution adopted by the Senate in December, 1982; from leading members of the House; and from his Cabinet: President Reagan -- in the wake of an intensive lobbying effort by the Japanese government -- denied Houdaille's request for relief. Houdaille's request, though ultimately unsuccessful, did provide the first extensive substantiation of the destructive impact wrought by targeting in the machine tool industry -- an industry recently recognized by President Reagan as essential to U.S. defense preparedness. Earlier this year, Houdaille announced plans to sell three of its five machine tool operations.

A firm statutory basis for relief begins with a definition that provides reasonable guidelines for U.S. industries which may be seeking relief and which affords adequate notice to foreign governments. As currently drafted, S.1860 does not meet either of these objectives.

The drafters of S.1860, by including "protection of any industry in its formative stages" as an unreasonable practice under Section 301, apparently contemplate that at least some targeting practices should be made actionable. However, S.1860 provides no further elaboration -- definitional or otherwise -- concerning what forms such unlawful protection might take. In addition, we point out that infant industry protection is but one unreasonable practice falling under the targeting "umbrella."

The statute should make clear that unlawful targeting includes any combination or system of practices which, individually, may constitute permissible governmental assistance, but which become unlawful when operated as part of a coordinated effort to place targeting recipients at an unfair competitive advantage. We believe that the definition of targeting set forth in H.R.4800 (House-passed trade legislation) accomplishes this objective and respectfully urge the Committee to take a close look at that language. In addition, H.R.4800 addresses the issue of "passive" targeting by including "toleration of cartels" as an unreasonable practice under Section 301.

We are aware that, in amending Section 201 to include targeting within the concept of "threat of serious injury," the drafters of S.1860 provide some definitional guidance. However, NMTBA believes that Section 301, by offering a broader range of remedial options, provides the most appropriate basis for targeting relief. The revisions proposed by S.1860 notwithstanding, Section 201 remains, primarily, a vehicle for import relief -- however, depending upon the circumstances of the particular case, such relief may not always be the preferred means of redressing the targeting victim's competitive harm. For example, negotiated intervention in third country markets or negotiated access to the offending country's market would not be available remedies under Section 201. In addition, under S.1860, once a Section 301 violation has been determined to exist, action to offset or eliminate the unlawful practice is required, thus assuring that relief will be forthcoming. NMTBA strongly supports this approach, which is not a feature of 201 relief.

Truly effective statutory remedies available to U.S. victims of industrial targeting must also take into account the fact that often the adverse competitive impact wrought by targeting practices is not felt until *after* those practices have ceased. For example, a foreign government may employ targeting practices in order to nurture the growth of one or more of its "infant" domestic industries. Most of the targeting practices may stop, however, once those industries reach a level of competitive maturity which permits them to then unfairly displace their American counterparts. It is, therefore, appropriate that sanctions be imposed on targeting recipients and/or that compensation be provided to targeting victims in such circumstances. Potent remedies would create a powerful deterrent by putting foreign governments on notice that their targeting practices will not be tolerated.

We are aware that, traditionally, retaliation against unfair trade practices ends when the practices themselves end. But we must not permit targeting beneficiaries to continue to reap the unjust enrichment made possible by past practices which facilitated their penetration into the U.S. market -- particularly when import levels threaten to undermine U.S. national security.

Committee Report language accompanying H.R.4800 adequately addresses this problem by providing that at least some element of export targeting, in order to be actionable under Section 301, must still be in existence. However, action under Section 301 would *not* be barred even though certain individual targeting practices may have ceased by the time the case is under investigation. The House Report also provides that, in certain cases, the effect of *past* practices may be taken into account when assessing the full benefit of the targeting -- a consideration which, we believe, will be helpful in the negotiation of an appropriate remedy.

NMTBA views the House Report language as an equitable compromise on the important issue of past targeting practices. We respectfully suggest that the Committee adopt this rationale when devising its approach to the targeting problem.

And, in order to keep future Houdaille-type cases from arising, NMTBA believes that proof of actual competitive injury should *not* be a prerequisite for any form of statutory relief. Since the harm caused by targeting may take several years to manifest, relief made available only *after* a showing of actual injury could very well come too late -- by the time the injurious effects can be documented, the industry may already have suffered irreparable erosion of its competitive standing. And, if the industry is critical to U.S. defense requirements, *our national security may have been irreparably compromised*. Should the Committee decide to adopt an injury requirement in Section 301 targeting cases, we urge you to permit actions to be brought upon a showing of *threatened* injury.

In addition, we suggest that the careful monitoring by U.S. trade agencies of foreign governments known to have perpetrated targeting practices in the past will also be effective in nipping any such future practices "in the bud."

C. Enforcement of U.S. Trade Rights Under Section 301

Unfair trade practices are generally dealt with in the context of violations which either occur or have an impact in the "host" country. But when a foreign government engages in an unfair trade practice in a market outside the U.S., the effect may be to place U.S. exporters vying for business in that third country at a serious competitive disadvantage. Accordingly, NMTBA is pleased to see that, recognizing this dynamic, the drafters of S.1860 explicitly characterize as burdensome to U.S. commerce the unlawful acts, policies and practices of a foreign country which have an adverse effect on trade between the U.S. and another foreign country.

D. Protection of U.S. Intellectual Property Rights

NMTBA commends the proposal to expand the list of unfair trade practices under Section 337 to include the unauthorized importation of an article or process which infringes on a U.S. patent, trademark or copyright. We are pleased to see that, under S.1860, there is no longer an injury requirement imposed in such cases, nor is there a requirement that the industry seeking relief from unauthorized importation necessarily be "efficiently and economically operated." These provisions aptly recognize that the primary focus of inquiry in such cases should concern whether any unauthorized importation has occurred.

NMTBA also strongly supports those provisions which permit U.S. patent holders to recover damages for the sale, use or importation of products made abroad in violation of a patented process.

III. CONCLUSION

The U.S. machine tool industry is determined to survive -- and survive it will. But we are disturbed that the process of survival for many machine tool companies and their customers in search of a more competitive manufacturing climate is likely to include a transfer of more productive capacity and jobs offshore. We believe that meaningful tax and trade reform legislation will play a major role in reversing this disturbing trend. Thus the outcome of this debate (and the debate being conducted in the tax conference with the House) carries profound implications not only for the future of U.S. industrial competitiveness, but for our national security as well.

Thank you for providing us with this opportunity to present our views. We would be happy to respond to your questions.

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202/338-1990

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Statement of

Robert A. Best

Vice Chairman, Trade Net

on S.1860

Before the

Committee on Finance

United States Senate

August 13, 1986

Mr. Chairman, members of the Committee on Finance. I sincerely appreciate this opportunity to comment on the provisions of S-1860 with particular emphasis on the national security provisions of U.S. trade law.

At the outset, I wish to commend the authors of the legislation for the comprehensive and inclusive approach to the international economic challenges facing the United States.

S-1860 attempts to integrate the trade, monetary, and debt issues in the same package of authorities and directions. For many years we have talked about the relationships between trade, investment, exchange rates, fiscal and monetary policy and the international debt issues. Yet in practice, we treated them as if they were totally separate issues.

While there is no simple solution to the international economic challenges facing the United States and the world, it is clear that each problem cannot be isolated and treated without reference to the others. While this integrative approach is desirable, the jurisdictional compartments within the Congress and the Executive branch make such an approach difficult at best.

A Digression-- Trade Implications of Tax Reform

Members of Finance Committee are in the middle of the most radical and sweeping tax reform measure in he history of the tax code. The implications of each decision on the international competitive position of American industries must be considered very carefully. In this connection, I believe the Joint Committee ought to provide some estimates on the international competitive impact of the various options at least in general terms. I am concerned that in the present environment of economic sluggishness and rising deficits, that the sweeping and rapid changes in our tax laws (which would eliminate in one year, and in some cases retroactively, for individuals as well as corporations, the Investment Tax Credit, the long term Capital Gains differential and some of the major benefits of the

Accelerated Cost Recovery System) could throw the economy into a tailspin in the short term, and have severe international economic implications for American industries and jobs in the long term.

No one really knows for certain and in precise terms exactly what the elimination of investment incentives in favor of consumption via a lower rate structure, will do to our economy. Common sense tells us that when you tax Peter to pay Paul, Peter is going to have three choices: (a) pass the increased taxes along in the form of higher prices; (b) absorb them by cutting costs; or (c) quit. Choice (a) means greater inflation or import penetration; (b) unemployment; and (c) greater unemployment.

In many respects, the Senate bill is an improvement over current law and the House bill. Without an gradual transition and the maintenance of sufficient long term investment incentives, I am fearful that a Conference agreement may be a distinct step backward from present law. In all candor, I do believe the Senate made a major mistake by eliminating the long term capital gains differential, which could have been preserved at existing levels without doing violence to the simplicity of the 15-27% rate structure and without, in my judgement, having a negative effect on revenues, assuming a dynamic impact analysis. Finance Committee members have often cited the reduction of capital gains taxes in 1981 as an example of how a reduction in taxes often results in greater revenues. It appears to me that the House is currently trying to make the Senate pay too severe a price for the "15-27% or bust" rate structure and, if payed, the victims will be the American people.

National Security Provision

Section 232 of the Trade Expansion Act of 1962 as amended, provides for widely recognized and GATT- sanctioned exceptions to free trade based on national security grounds. Adam Smith himself recognized the national security argument for protection. We have over the years, engaged in a variety of protective devices. Yet, to the best of my knowledge, the only serious relief under the national security provisions of the trade laws of the United States was provided to the petroleum industry by President Eisenhower. He imposed quotas on petroleum and petroleum products after a number of Commissions and agencies reached the conclusion that unlimited imports of those products seriously threatened our security. The oil import quota system broke down in the early seventies as a result of domestic and foreign pressures.

The question is: "what procedures and criteria should be used to determine whether or not an industry qualifies for relief from imports because unrestricted imports constitute, or threaten to constitute, a serious threat to our security? The Secretary of Treasury had primary responsibility for administering section 232 under the 1962 Act. Now the Secretary of Commerce has that responsibility in consultation with the Secretary of Defense and others as appropriate.

On national security issues, Defense must necessarily play a dominant role. The Defense Department knows which materials and products are critical to security requirements. They must know what our domestic productive capacities are in those materials and products.

As in other procedural issues, the process must be able to reach determinations within clear criteria on: (a) whether an industry is vital to our national security; and (b) whether imports of a particular product threaten the viability of that industry. Some form of petition and relief must be provided with time frames for decisions and, above all, clear criteria developed which would guide the determining agencies in these delicate areas. Otherwise, the decision will be strictly political and if the close pin or panty hose industries are politically well connected, they will get the relief. I do not wish to prejudice their case, but one can stretch national security arguments only so far before they lose their persuasiveness.

S 1860 would give the President 90 days to reach a decision after the Secretary of Commerce sends his recommendations or the recommendations of the Secretary would be automatically implemented, assuming the President would sign the Executive order. I am not sure 90 days is sufficient; nor am I sure that the Secretary of Commerce is the appropriate official to make recommendations in this area. I am reasonably sure that no Cabinet officer who likes his job will recommend something the President strongly opposes.

One might consider, for example, having the Secretary of Defense indicate each year in a confidential report to the Congress which industries are considered critical for national security and report how much dependency our nation has on foreign supplies, as well as the security of supply, of products produced by those industries considered critical to our national defense.

The remedies for an inadequate industrial base in those critical areas may be broader than trade policy. The President should be given the flexibility to chose from a variety of nontrade options to enhance the viability of the critical domestic industry. Perhaps, he should recommend which legislative actions may be necessary to preserve the viability of a particular industry. Expedited legislative procedures could be established to consider on a priority basis his legislative recommendations.

Negotiating Authority

S 1860 does provide direction and negotiating authority to the Trade Representative. The USTR as he is now called, serves as a bridge between the two branches and he is the logical one to whom the authorities should be delegated. However, as he serves within the White House and at the pleasure of the President, I don't think it matters that much whether he is given the authority directly or indirectly. He is not going to do something "on his own".

The proposed legislation strives to achieve a balance between the Constitutional responsibilities the Congress and the Executive. I fully understand and support the principle of an Executive-Legislative partnership on trade. The Constitution clearly gives the Congress plenary authority to " set duties , imposts" etc. and "to regulate commerce with foreign nations". The Executive has the plenary authority "to negotiate with foreign nations". Hence, in the formulation and implementation of trade policy there is no choice but a partnership with the Executive having the full negotiating authority and the Congress the implementing authority.

It was my idea to include a fast track no amendment procedure in the 1974 Trade Act after the House had adopted the one-house veto procedure over "non-tariff barrier" agreements. It seemed to me, as the principal staff person with responsibility to recommend amendments to the Committee, that the positive approval approach as opposed to the legislative veto approach was not only more in keeping with the Constitution, but also would make for a better partnership. It worked well for the Tokyo Round and I see no reason why it should not be a standard approach for the next round.

No trade negotiator can afford to ignore the Congress and particularly this Committee if he or she wishes to see the agreements approved. At the same time, I don't believe that the Congress can keep the Executive on such a short leash that it has no room to negotiate. In this connection, it seems to me that the provisions of S 1860 which effectively would thwart a fast-track no-amendment procedure by a single Committee vote within 60 days after notice of intent is provided, are unnecessary and unwise. One Committee could effectively deny the other the right to consider the merits of a trade agreement under the expedited procedure. This could effectively put the fate of an agreement into the hands of one or another interested party or the emotion of the moment. A sensational headline could destroy years of patient negotiation. The foreign negotiators would refuse to bind themselves to anything if the Executive had to subject each agreement to a Committee veto procedure. The power of the purse is a better way of getting the Administration's attention than veto procedures.

Secretary Brock was a distinguished member of this Committee and a former U.S. Trade Representative. He can tell you better than I whether a trade negotiator can do an effective job if his agreements are subject to a one Committee veto even if appears to be on procedural matters. A more positive approval by each House is better policy than a one Committee veto procedure.

Presidential Discretion Under the Escape Clause Unfair Trade Practice Statutes

Another area which I know is contentious is the question of how much flexibility the President should have under positive injury findings of an escape clause procedure by the USITC, and whether there should be mandated actions following an unfair trade practice finding under section 301. Every President wants unlimited flexibility to make decisions because he has many other matters to consider in his decision which often relate to foreign policy and security issues. In certain areas, perhaps out of frustration, the Congress has increasingly tried to tie the President's hands, either by micro-management techniques, including one-house vetoes, or by mandating a particular course of action if certain findings are met. I come out somewhere in the middle -- for some Presidential flexibility but within firm guidelines of doing something positive for a long-term solution to the apparent injury suffered.

Escape Clause

As some of you may recall in the Senate version of the 1974 Act, the President would have been obligated to "do something" in the face of a positive and unanimous finding of serious injury to an industry under the escape clause. Adjustment assistance was an option, but not necessarily the preferred one where the Commission decision was unanimous. The Conference Committee adopted an approach where he could chose to do nothing.

It seems to me that if the President had a variety of remedies, including some which were not trade restrictive but dealt with fundamental causes of the injury and positive remedies thereto, he would not object to a requirement that in cases in which the decision of the independent agency was clear and unambiguous, he would have to act positively. I do not believe you can force him to adopt a restrictive approach or the particular approach that a majority of the Commissioners recommend. I do believe that in those clear and unambiguous cases, he should not have the flexibility to ignore the problem.

Section 301-- Unfair Trade Practices

Those of you who knew me when I served on the Committee staff know that I am no friend of "unfair trade practices". The 1974 Act was toughened up considerably from the old section 252 of the Trade Expansion Act of 1962. Incidentally, the legislative author of section 252 was Senator Paul Douglas of Illinois, who was not only a distinguished member of this Committee, but prior to his service in the Senate was a distinguished professor of Economics at the University of Chicago and author of some classical economic texts that discerning graduate and undergraduate schools still use. Senator Douglas was a staunch free trader. But he recognized that if the other fellow is playing by a different set of rules, free trade theory entitled you to fight back. The point is that combating unfair trade is pro competitive and consistent with "classical" economic theory.

The key issues in my mind are: (a) whether the United States should declare unilaterally what is "fair" and "unfair"; (b) whether there can be internationally-recognized principles on those definitions within the GATT framework; and (c) how should Congress fashion an instrument which "forces" the Executive to reach a decision on the cases brought without creating a mandated inflexible instrument. In certain cases such as dumping, patent infringement, violation of intellectual property rights, I am optimistic that the answers are positive; in the subsidy area, I am somewhat less so.

The theory of section 301 is that the international pressures of the cases would force a resolution. If there is not an appropriate resolution within a reasonable period of time, the President would have the use of a "flexible retaliatory response"-- conventional, non-nuclear, to be sure. Retaliation in trade was the last resort and rarely resolved the problem of market access or other alleged unfair trade practices. Yet to be effective, it had to be a credible threat. The "chicken war" didn't help American chickens or turkey parts (the bones of contention between the U.S. and the E.C. at the time) but the duties on French wine and VW buses did probably inadvertently help Ernest and Julio Gallo and General Motors for a time.

The GATT mechanism for dealing with these cases needs to be overhauled. If GATT is to survive as an international agreement respected by the signatories, it is going to have to be brought up-to-date. In conclusion, we must continue the course of patient negotiation without fear of using the tools of enforcement for unfair trade practices which do not resolve themselves to negotiated solutions within reasonable time frames.

Council on International Economic Policy

The integrative approach taken in S 1860 and the various turf battles within both branches, but particularly the Executive, over the formulation and execution of trade policy, calls for some coordinating body on international economic issues. This problem was perceived during the late sixties and early seventies and as a result the Council on International Economic Policy was created. It functioned well as a central White House coordinating unit in much the same way as the National Security Council functions. It was disbanded under the Carter Administration as an economy move. I believe it ought to be resurrected.

Congress may also have to consider its own jurisdictional distinctions and perhaps consider an ad hoc joint committee on international economic issues. At present, Finance has primary jurisdiction over trade agreements and import policy, Banking has export issues such as the Export Import Bank, and the Export Administration Act, Banking and Judiciary have issues such as the Foreign Corrupt Practices Act and so on. S 1860 affects a number of Committee jurisdictions and I imagine if it were reported out it would have to be referred, at least by section reference, to quite a few Committees. If there are negotiations over trade, debt and monetary reform, as the bill calls for, a joint Congressional oversight would seem to make sense.

General System of Preferences

Your bill revises the GSP title of the 1974 Act. As background, the United States supported the so-called General System of Preferences, partly in response to UNCTAD demands and partly to avoid regional preferences such as the EC preferences with their former colonies. The regional preferences remain. GSP does not deal with the causes of the economic plight of many developing nations which, in my view, are deeply rooted in culture and denial of basic property rights.

S 1860 deals with the graduation issue. The criteria for graduation ought to be objective. It is unnecessary to mention specific nations in the bill. To some extent, the threat of withdrawal of GSP benefits provides the Executive with negotiating leverage to achieve market access goals. We should recognize that there has been progress in a number of specific areas with key beneficiaries including the Republic of Korea and Taiwan. Legislative elimination of the nations as beneficiaries, outside of the criteria-oriented graduation approach, could take away some leverage from the USTR.

Summary of Recommendations

Mr. Chairman, this concludes my statement. I have tried to make some positive suggestions for your consideration. My conclusions are as follows:

(1) Avoid legislative quotas;

(2) Consider a competitive impact statement for all revenue bills;

(3) Provide clear negotiating authorities within defined directions;

(4) Work out appropriate compromises with the Executive on the administration of the unfair trade practice statutes;

(5) Revise the national security provisions to ensure that America has a sufficient domestic productive capacity to meet our legitimate security needs;

(6) Consider reviving the Council on International Economic Policy;

(7) Consider a joint oversight committee on international economic issues, including members of Finance, Banking, and Commerce, which would not interfere with existing jurisdictions but could assist in coordination of legislative policy on these interrelated matters;

(8) Expand the remedies under the escape clause;

(9) Avoid singling out nations in legislation and continue to use objective criteria on eligibility for GSP and other matters.

AUGUST 13, 1986

STATEMENT SUBMITTED BY REP. NANCY JOHNSON OF CONNECTICUT FOR THE SENATE FINANCE COMMITTEE HEARING ON THE OMNIBUS TRADE BILL AND PROPOSED REFORM OF SECTION 232, THE NATIONAL SECURITY CLAUSE

I would like to take this opportunity to urge the Committee's support for a tighter section 232 process through enactment of a deadline for administrative action.

We saw in the machine tool petition, which was favorably resolved earlier this year, a devastating and unnecessary delay of more than 3 years. It took one year for Commerce to assess the situation (again) and make recommendations to the President, and then it sat on his desk (actually in the National Security Council's offices) for two years.

This happened because there was no statutory deadline for him to act, one way or the other. It was an attempt to pocket veto the petition of a critical basic industry, and it left investment planners in limbo as to whether any government support was on its way or not.

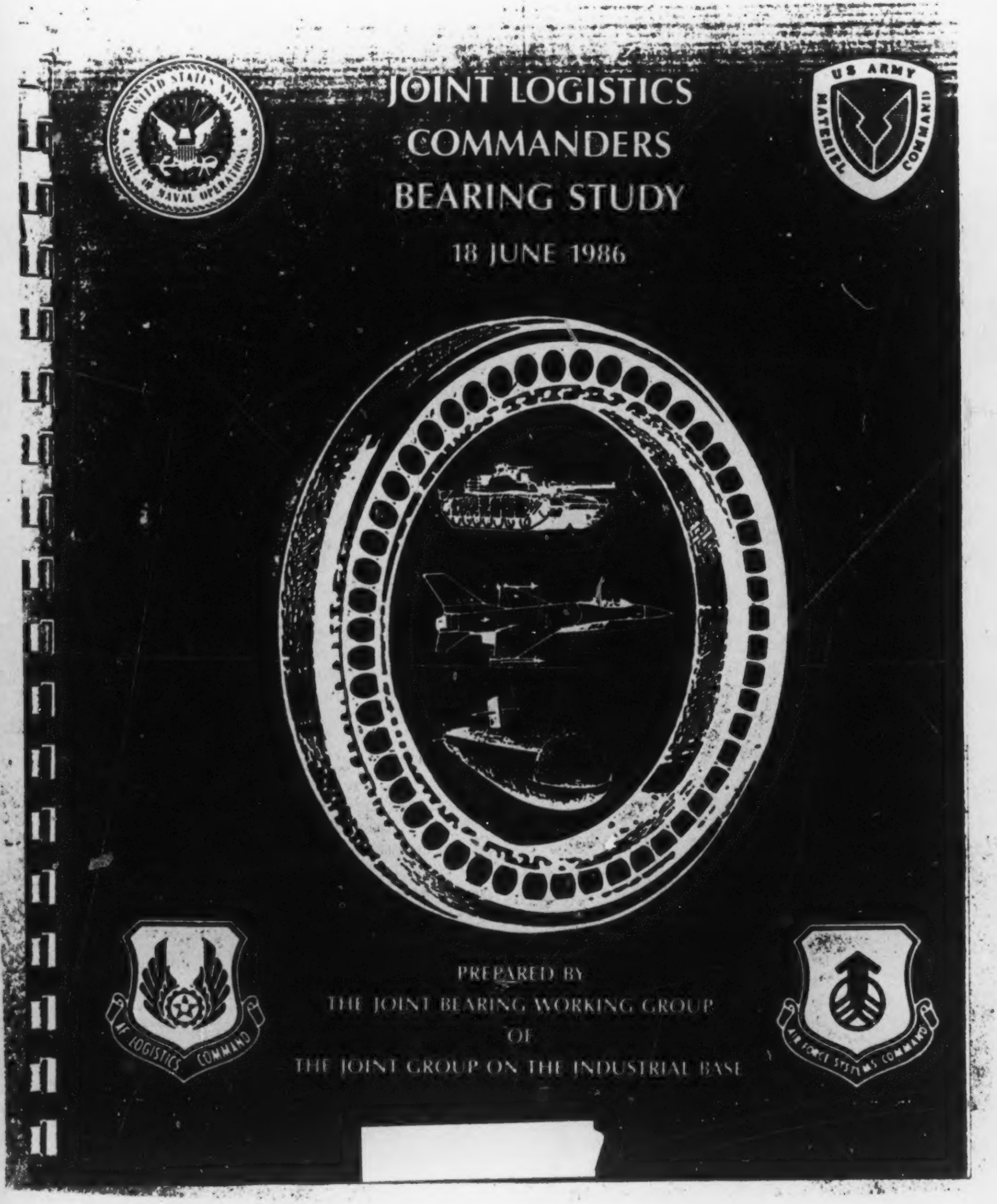
While industry waited, machine tool imports doubled, causing the Pentagon to become more concerned and eventually to back Commerce's recommendations. But there was no reason to wait for the spread of infection by 1986 when the open wound could have been treated properly in 1984.

We are facing the same problem in the bearing industry, which has suffered terrible losses recently. I commend your attention to a recent study undertaken by the Pentagon at my request, and I would like to include a summary of its report in the hearing record immediately following my statement.

The Committee should be made aware that a Defense Department panel has strongly recommended swift, substantive and comprehensive actions. Section 232 may prove to be the best way to accomplish these, but reforms in the law are needed to make its use an effective course of action.

As far as what the deadlines should actually be, I believe a period of 4 to 6 months for Commerce is reasonable, as opposed to the current 1 year limit, followed by a Presidential decision within 60 to 90 days, as opposed to maintaining no deadline under current law.

Thank you for this opportunity to reaffirn my support for strengthening the section 232 process.


UNITED STATES NAVY
CHIEF OF NAVAL OPERATIONS
US ARMY MATERIEL COMMAND
AF LOGISTICS COMMAND
AIR FORCE SYSTEMS COMMAND

JOINT LOGISTICS COMMANDERS BEARING STUDY

18 JUNE 1986

PREPARED BY
THE JOINT BEARING WORKING GROUP
OF
THE JOINT GROUP ON THE INDUSTRIAL BASE

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

ACQUISITION AND
LOGISTICS
(PS/IR)

14 JUL 1986

Honorable Nancy Johnson
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Johnson:

Attached is the study on the bearing industry that was done by the Joint Logistics Commanders (JLC) for us in conjunction with the requirements contained in Conference Report #99-450, pages 179 & 180, and House Report #99-332, pages 144 & 145. Because of your interest in the bearing industry, I am forwarding a copy of the study to you, in addition to the House Appropriations Committee.

The JLC study concluded that the domestic bearing industry is vital to the national defense because many of our weapon systems contain precision bearings. It also showed that the Department of Defense (DoD) requirements (approximately 17%) are not sufficient to maintain a domestic bearing industry. The bearing industry is being impacted by imports with the foreign share of the U.S. ball bearing market being 39% and 36% of the U.S. roller bearing market. The study recommended both short-term actions which may be implemented by DoD and long-term actions which involve trade and economic issues which need to be considered by the Department of Commerce (DoC) and may require congressional support.

We share your concern with the availability of domestic bearings and the state of the domestic bearing industry. It is apparent from the study that in order to maintain a domestic source for bearings something needs to be done. We are in the process of evaluating the study to determine a plan of action for implementing the study's recommendations which are within DoD's capability. I plan to forward the JLC study to the DoC for their consideration of the trade and economic issues which need to be amended to help the bearing industry become more competitive.

Thank you for your continued interest in the national defense.

Sincerely,

James P. Wade Jr

James P. Wade, Jr.

Attachment

EXECUTIVE SUMMARY

The Deputy Secretary of Defense, William Howard Taft IV, in response to Congressional concern over government policies for procurement of ball bearings and how they affect the domestic industry, requested the Joint Logistic Commanders (JLC) conduct a study of the criticality of the bearing industry to the defense posture. Particular emphasis was to be placed on 30mm and larger bearings. As part of this review a determination was to be made of DOD and commercial bearing requirements, industry capacities, impact of bearing imports on national security in surge and mobilization environments and other factors affecting the bearing industry.

In response to Secretary Taft's request, the JLC tasked the Joint Group for the Industrial Base (JGIB) to establish a study team to address these issues. The team, the Joint Bearing Working Group (JBWG), included personnel from each of the services and the Defense Logistics Agency. The Department of Commerce and the International Trade Commission were asked to become members because of their expertise in trade and economic issues.

The JBWG developed questionnaires designed to gather data for analysis that would answer several taskings. Separate surveys were designed for the bearing industry, engine manufacturers, bearing component suppliers, specialty steel producers and tool manufacturers, all impacting or being impacted by conditions relating to the health of the bearing industry. Major companies in these industries were surveyed and plant visits were conducted at selected facilities to emphasize the criticality of the study and to discuss trade and economic related issues.

After analysis of data collected, discussions with company officials, and review of previous related government studies, the JBWG concluded that the US bearing industry, having been subjected to foreign penetration of the domestic market for an extended period of time, and having suffered the natural consequences of this lost market share, is in imminent danger of being unable to support national defense needs.

Findings

The JBWG concluded that imports of bearings over 30mm in diameter began to impact the position of domestic bearing companies in 1978. Since then, steady erosion of the commercial bearing sector has taken place.

This trend is continuing, and as foreign producers capture an ever increasing share of the US market, it becomes more difficult for domestic firms to remain competitive. The foreign share of the ball bearing market is currently 39% while 36% of the roller bearing market is held by foreign firms. Smaller bearing sizes, for which a FAR has been in effect since 1971, were first affected by imports in the mid 1960's. However, imports of these smaller sizes also increased since 1978, along with the larger sizes.

The commercial sector of the bearing market has traditionally provided the economic base over which production costs are spread. The Department of Defense portion of the total bearing market is approximately 17% (the superprecision segment is approximately one-fifth of DOD consumption). However, DOD demands alone are not large enough to sustain the overall health of the industry, or to provide incentives for firms to invest in new equipment or train new workers. Further, as the commercial sector has deteriorated, domestic producers have been forced into the production of specialty bearings or niches, to remain in business. These niches are characterized by low profit, low volume, high cost production runs. As the outlook for the commecial sector of the bearing industry continues to worsen, maintenance of adequate defense capability cannot be guaranteed.

Defense production has become a more important market for many domestic producers as they have given way to competition from foreign manufacturers in the commercial/commodity bearing sector. Until recently defense markets remained within the pervue of domestic producers and served as a refuge against foreign incursion. Some original equipment manufacturers have begun bearing qualification procedures with foreign producers and indicate that upon qualification of these sources, procurement of most of bearings used for new production of military engines will use those sources. Reasons cited for the decision to use foreign bearings is based on lower price, leadtime and better quality than offered by US firms.

Finding their traditional markets eroded, domestic producers have become reluctant to invest in modern capital equipment. This will further diminish their ability to compete in the world market. Conversely, as foreign producers capture a larger share of the domestic market, increasing profits provides them with the willingness to upgrade equipment and further widen the competitive gap between themselves and domestic producers.

If this trend is permitted to continue, qualified domestic producers will be forced to shut down production lines and some close their doors permanently. Once this production capability is lost it is difficult to regain within a reasonable time. Company officials estimate it would take at least four years to rebuild capability to produce superprecision bearings. Long leadtimes are caused by the design, order and in-place qualification of machine tools, redesign of plant layout, steel supply, and manpower training.

Production capacity within the industry is currently capable of meeting peacetime defense needs. There is however, little capability to expand capacity. While equipment remains idle that previously was used to produce commercial/commodity grade bearings, it is not, in most cases, readily convertible to the production of high precision bearings necessary for DOD weapon systems production. Additionally, peacetime demands upon domestic bearing producers have driven leadtimes beyond 40 weeks for several bearings, forcing OEMs to look elsewhere for sources which can meet their production schedules.

Superprecision bearing production require special equipment and highly skilled labor. This makes interchangeability among bearing lines or companies unlikely. The work force in the bearing industry is ageing; and, because of reduced overall production, fewer opportunities are available to train new and younger employees. These conditions will continue to restrict surge and mobilization capabilities. Survey data indicated the four mainshaft bearing manufacturers for gas turbine engines could reach only 39% of the surge target (doubling production) after 12 months and fall short of the mobilization target (quadrupling production) by 50% after two years. This situation is expected to worsen in the next few years.

As the OEM's increase their use of foreign bearings, additional limits are placed on domestic firms' ability to respond to surge and mobilization. OEMs increased dependence on foreign sources can lead to interruption of supply during an emergency, placing our nations' defense posture in jeopardy.

RECOMMENDATIONS

The following recommendations have been developed by the Working Group to address the problems and issues that are now facing the US bearing industry. They are intended to: (1) provide solutions that can be immediately applied to the problems that must be solved to prevent the further erosion of the bearing industry: and (2) propose solutions to resolve the long term issues that must be resolved to ensure the survival and the continued viability of the bearing industry.

SHORT TERM These recommendations can be initiated by the DOD and will provide immediate relief to the bearing industry.

1. Supplement existing FAR to require for new designs for all defense applications, purchase of only domestically manufactured bearings (should not apply to existing design applications not currently available from domestic producers). Exceptions and waivers will be provided based on existing agreements (foreign government) within the best interest of the Federal Government. However, the intent is to provide domestic manufacturers the opportunity to develop capability to produce all defense bearings.

a. The regulation would apply to all DOD direct and indirect (contractor, OEMs, etc.) purchases of all types of ball (including spherical monoball), roller bearings, airframe and aircraft control bearings.

b. All of these bearing and bearing parts shall be manufactured in the US (within the definition of domestic end product as specified by FAR).

c. No unfinished or semi-finished foreign parts will be used in the manufacture of bearings for the DOD.

d. The FAR should be in effect for a limited period of time, at least five years. This would allow the bearing industry time to dedicate a portion of profits gained during this period toward modernization of facilities and equipment, and work force training programs.

2. The DOD should adequately fund industry modernization programs above current program levels as a means to provide incentive for the bearing industry to modernize equipment and facilities. DOD should also encourage development of new technology and processing equipment, that will improve the quality and ultimately the competitiveness of US bearings. OSD should consolidate its efforts in this area to establish a continued effort toward modernizing production capabilities.

3. The DOD should explore utilizing Title III of the Defense Production Act to assist the bearing industry to expand bearing capacity where inadequate.

4. The DOD should investigate industry needs for projecting bearing requirements, and the Services/Agencies develop the capability to provide this forecast.

5. The DOD should work with industry to determine the extent of bearing refurbishment. It should decide both DOD and commercial shares of bearing rework. The DOD's capacity should be directed toward urgent requirements and surge conditions.

6. The DOD should restrain the transfer of important bearing related technology that occurs through licensing agreements, by limiting the number of these agreements. Each agreement causes a loss of US technology as well as lost production opportunity.

LONG TERM

There is an urgent need to address the underlying issues that are causing the deterioration and erosion of the US bearing industry. These fundamental problems should be addressed by the establishment of a panel chaired by the Department of Commerce that can focus on trade and economic issues, and will help develop a fully coordinated national policy. This panel should consist of experts in trade and economic policies, federal procurement policies, and international relations. The panel would address areas such as:

Trade Issues:

1. Consider limiting bearing imports temporarily, combined with domestic producer plans for facility modernization and workforce training programs. This would allow a limited time period for the industry to expand market share and increase profits. Concurrently, through Government/Industry agreements, a minimum portion of these profits would be dedicated for plant and equipment modernization.

2. Evaluate industry concerns regarding existing anti-dumping regulations and evaluate their ability to discourage dumping and unfair trade practices. Consideration should be given to implementing actions that would control the "unfair" trade penetration (predatory pricing and cartels) of foreign bearings in the US bearing market.

3. Review industry concerns regarding existing anti-trust laws as they affect the bearing industry. Investigate a temporary exemption from anti-trust laws to allow industry the opportunity to consolidate bearing lines and rationalize production. Major foreign markets have already allowed this process to occur and have realized production and competitive efficiencies.

4. Analyze current US and foreign tariffs and quotas on bearing parts, components, and steel. This will encourage domestic subtier suppliers to reestablish manufacturing capacity to support the increased demand for bearing parts, components and specialty steels.

Economic Issues:

1. Evaluate the need and benefit of low interest loans to the bearing industry that would help obtain the necessary capital to build new plants and purchase new equipment. There is an urgent need for the aging bearing industry to modernize and become more competitive in the domestic and world markets, and to improve the quality of the product.

2. Evaluate the need and benefit of establishing an investment tax credit program for the domestic bearing industry that would help modernize plants and purchase new CNC equipment that is needed to become more efficient and improve the quality of bearings.

If approved, the tax credits, should be invested in new equipment and plant modernization and provisions should be provided to monitor this activity.

3. Evaluate the benefits of reducing the inventory tax on bearings and bearing parts and the positive effect this could have on the bearing industry.

Materials:

Evaluate the benefit of developing a national plan that would establish domestic production capability for all materials and parts used in the manufacture of bearings. This includes the currently imported specialty steel that is used in the manufacture of bearing and bearing balls and includes retainer materials sourced from foreign suppliers.

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Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Senate Committee on Finance in a hearing on proposals to amend the "national security" clause (Section 232) of the trade legislation. August 13, 1986

(The U.S. Council for an Open World Economy is a private, non-profit, public-interest organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

There is considerable merit to requiring a definitive Presidential response, within a reasonable time, to a finding of import-related impairment of the mobilization base (under Section 232 of the trade act) by the administration official (currently the Secretary of Commerce) responsible for judging such petitions. Those who petition for government help in these proceedings are entitled to a definitive response, and the nation as a whole is entitled to assurance that the necessary attention is being given to claims of impairment of the national security. However, proposals that would only or primarily set time limits to the President's consideration of such findings would amount to little more than tinkering with a policy mechanism that needs structural overhaul. Proposals -- other than time constraints -- that would in any way curtail the President's discretion in these cases should be totally rejected.

The "national security" clause of the trade legislation was flawed from the very outset over 30 years ago. The overhaul needed to correct this defect (a reform which this Council alone has advocated) would rectify the statute's unwise designation of import restriction as the only action required of the President if he accepts a finding that imports of a product threaten the national security. I have argued for many years that import restriction (if justifiable at all) for legitimate national-security purposes should be only one component of a coherent adjustment strategy that seeks a durable solution to the particular weakness in the mobilization base. In the face of import-related impairment of the mobilization base (in effect, a contingency ultimately decided by the President), the statutory mandate for remedial action should be, not (as now) "adjusting" the imports as the only required remedy, but a coherent strategy to ensure solution of the mobilization problem through whatever remedies are deemed necessary and appropriate. The strategy should include reassessment of all statutes and regulations materially affecting the industry's ability to cope successfully with import competition and other challenges of change, in order to determine if there are any inexcusable inequities that demand correction. The strategy should systematically be reviewed by Congress every year to determine if everything that needs to be done is being done and if further legislation is advisable, as well as to make sure that import controls and other extraordinary assistance at public expense last no longer than is necessary.

If the government in the late 1950's had proceeded in this fashion from the finding of national-security impairment involving unrestricted imports of petroleum, we might at least have alleviated the oil crisis of the 1970's. Instead of a coherent, cohesive petroleum strategy, we settled for oil import quotas and continued recourse to an assortment of tax breaks that had acquired a life of their own.

I endorse the purpose, and have no disagreement with the provisions, of the bill introduced by Senators Byrd and Roth (S.2755, the National Security Trade Act of 1986) -- except for the bill's omission of any mandate to the President to devise a coherent strategy (not limited to import restriction alone) addressing the real problems and needs of the particular industry in the context of the total national interest. The bill appears to permit Presidential actions in addition to the import restraint for which it explicitly provides -- namely, by providing that "the actions which the President may take ... shall include, but are not limited to" import restriction via unilateral action or international negotiation. However, this does not go far enough toward the overhaul I consider essential, in that the bill does not require a Presidential decision of the scope I have proposed -- aimed at ensuring solution of the mobilization weakness through a carefully structured program of governmental and private-sector measures, and at terminating at the earliest opportunity whatever import restrictions and other subsidies may have been found essential.

The President, of course, has always had the freedom to devise such a balanced, industry-adjustment strategy in Section 232 cases --necessarily, under present law, with import controls if he declairs impairment of national security. But such an approach to import-impact cases of whatever variety has yet to be accepted by any President, and at this juncture does not appear likely in Section 232 cases without the statutory mandate I have proposed.

○